

TOWN OF SALISBURY



ZONING BY-LAWS

SPRING 2005

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ATTACHMENTS

**ZONING MAP (2/6/01)
SALISBURY BEACH OVERLAY DISTRICT MAP (5/16/05)
RABBIT ROAD C-4 DISTRICT MAP (5/16/05)**

TOWN OF SALISBURY, MASSACHUSETTS

ZONING BY-LAW

(Adopted May, 1978)

SECTION I

TITLE, AUTHORITY, AND PURPOSE

The Salisbury Zoning By-Law and Map is adopted pursuant to the authority granted by Chapter 40A of the Massachusetts General Laws as amended by Chapter 80B of the Acts of 1975, and as may be further amended from time to time is hereinafter referred to as the "Zoning Act." The purpose of this By-Law is to promote the health, safety, convenience, and welfare of the inhabitants of the Town of Salisbury by dividing the town into districts and establishing regulations and uses that insure the most appropriate use of the land.

SECTION II

GENERALLY

- A. Generally:** For the purpose of this By-Law, the following rules of construction apply: All words used in the present tense include the future tense; all words in the plural number include the singular number: all words in the singular number include the plural number, unless the natural construction of the word indicates otherwise; the word "person" includes a firm, association, organizations partnership, trust, company, or corporation as well as an individual; the word "shall" is mandatory and directory; the word "may" is permissive; and the word "used" includes "designed, intended, proposed, existing, or arranged to be used."
- B. Terms or words not defined herein:** But defined in the Building Code shall have meanings given therein, unless a contrary intention clearly appears, otherwise as the meaning quoted in the latest edition of Webster's Unabridged Dictionary.
- C. Definitions:** For the purpose of this By-Law, certain terms, word and/or series of words, whether or not the definition stated herein is contrary to common usage or contrary as quoted in the dictionary, shall be interpreted as follows:
- 1. Alteration:** Any construction, reconstruction or other action resulting in change in the structural parts or height, number of stories or exits, size, use or location of a building or other structure.
 - 2. Board:** The Zoning Board of Appeals of the Town of Salisbury; Massachusetts, unless otherwise specified.
 - 3. Building:** A combination of any materials, whether portable or fixed, having a roof, and enclosed within exterior walls or fire walls, built to form a structure for the shelter of persons, animals or property.
 - 4. Building, Accessory:** A detached or attached building, the use of which is customarily incidental and subordinate to that of the principal building, and which is located on the same lot as that occupied by the principal building.
 - 5. Community Facilities:** Premises owned and operated by a governmental or chartered nonprofit organization, but not including fraternal sports, or similar membership organizations.
 - 6. Driveway:** An open space, located on a lot, which is not more than 24 feet in width built for access to a garage, or off street parking or loading space.
 - 7. Dwelling, Detached:** An independent structure containing not more than one (1) dwelling unit.
 - 8. Dwelling, Mobile Home:** A trailer used as a permanent dwelling.
 - 9. Dwelling, Multifamily:** A building containing more than one (1) dwelling unit.

10. **Dwelling, Unit:** One or more living or sleeping rooms providing complete living facilities for the use of one or more individuals constituting a single housekeeping unit, with permanent provisions for living, sleeping, eating, cooking and sanitation.
11. **Family:** One or more persons, including domestic employees, occupying a dwelling unit and living as a single nonprofit housekeeping unit.
12. **Fuel Storage and Distribution Facility:** A facility where flammable and combustible liquids, flammable solids, or flammable gases as defined in 527 CMR 14:00 are stored for resale. This definition shall not include retail gas stations
13. **Funeral Home:** A building used for the preparation of the deceased for burial and/or cremation. Shall also include the display of the deceased and rituals connected there with before burial or cremation.
14. **Fur Farm:** The raising or keeping of more than one fur-bearing animal for the purpose of wholesale or retail, sale or distribution of Fur Pelts of said livestock.
15. **Gas Station (full or self service):** An establishment which provides for the servicing of motor vehicles or implements and conducts operations incidental thereto, limited to: the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories, and which may or may not include facilities for lubricating, or otherwise servicing motor vehicles.
16. **Height:** The vertical distance from the mean grade of the adjacent ground to the top of the highest point of the structure, not to exceed thirty-five (35) feet.
17. **Home Occupation:** An occupation conducted in a dwelling unit, provided that:
 - a. Not more than one (1) nonresident employee other than members of the family residing on the premises shall be engaged in such occupation.
 - b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than thirty (30) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
 - c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one (1) sign.
 - d. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
 - e. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot.
 - f. Home occupation businesses will be allowed by Special Permit granted by the Zoning Board of Appeals.
18. **Junk Dealers (other than motor vehicles):** Collectors of, dealers of junk, old metals, or second hand articles and salvage materials.

- 19. Junk Yard:** A yard, field, or other area used as a place of storage for:
- a. Discarded, worn-out, or junked plumbing, heating supplies, household appliances and furniture.
 - b. Discarded, scrap, and junked lumber.
 - c. Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, or plastic debris, waste, and all ferrous material.
 - d. Discarded motor vehicle parts or more than two (2) unregistered motor Vehicles.
- 20. Lot:** An area or parcel of land or any part thereof, not including water area, in common ownership; designated on a plan filed with the administrator of this By-Law by its owner or owners as a parcel to be used, developed or built upon as a unit under single ownership or control. Any subsequent subdivision of a lot into two or more lots shall be subject to and conform to all the regulations of the district.
- 21. Lot Frontage:** The horizontal distance measured along the front lot line between the points of intersection of the side lot lines with the front lot line.
- 22. Lot Line, Front:** The property line dividing a lot from a street (right-of-way). On a corner lot the owner shall designate one street line as the front lot line.
- 23. Lot Line, Rear:** The lot line opposite from the front lot line.
- 24. Lot Line, Side:** Any lot line not a front or rear lot line.
- 25. Lot, Nonconforming:** A lot lawfully existing at the effective date of this By-Law, or any subsequent amendment thereto, which is not in accordance with all provisions of this By-Law.
- 26. Motels, Hotels, Cabins:** A building, or portion thereof, or a group of buildings on a single lot, intended to be used for the temporary occupancy of one (1) or more persons who are lodged, with or without meals, and in which major provision for cooking may be made in a central kitchen but may not be in the individual rooms or suites.
- 27. Owner:** The duly authorized agent, attorney, purchaser, devisee, trustee, lessee, or any person having vested or equitable interest in the use, structure or lot in question.
- 28. Parking Space:** An on-site, off-street space having an area of not less than 200 square feet, in a 20'x 10' configuration, plus access and maneuvering space, whether inside or outside a structure for exclusive use as a parking stall for one motorized vehicle, and further being surfaced with durable pavement.
- 29. Piggery:** Any parcel of land and/or buildings used for the raising or keeping of more than four (4) pigs (12 weeks or older).
- 30. Product Assembly:** Assembly or construction of products such as electronic and telecommunications products, software, cameras, etc. The process shall not produce cinders, dust, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor and heat, or other offensive byproducts

31. **Recorded:** Recorded in the Essex District Registry of Deeds or registered in the Essex District Registry of Land Court.
32. **Refuse:** Rejected or worthless articles or matter; rubbish, trash.
33. **Research and Development Laboratories:** A facility for carrying out investigations in the natural, physical, computer, or social sciences, which may include engineering and product development. Manufacture of products is allowed provided they meet the requirements for Product Assembly.
34. **Restaurants:** An establishment where food and drink are prepared, served, and consumed primarily within the building and on the premises.
35. **Restaurants - Fast Food:** An establishment where food and or beverages are sold and packaged in a form ready for consumption whether on not consumed on the premises.
36. **Sign:** Any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction.
37. **Sign, Oscillating or Flashing:** Any permanent or temporary structure which is in the nature of an advertisement, announcement, or direction, or is designed to attract the eye by intermittent or repeated motion or illumination.
38. **Storage Trailers** Any structure or piece of equipment, without a permanent foundation, with or without wheels, or which is portable that is to be used for the storage of materials and supplies, which can be constructed of, but not limited to, corrugated metal, sheet metal, old mobile home, or fiberglass. Storage trailers shall only be allowed as an accessory use to a primary use. They shall only be permitted for a maximum of 2 years with a building permit issued by the Building Inspector.
39. **Structure:** A combination of materials assembled for occupancy or use, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium reviewing stand, platform, shelters, piers, wharves, bin, fence, sign, or the like.
40. **Structure, Nonconforming:** A structure lawfully existing at the effective date of this By-Law or any subsequent amendment thereto, which does not conform to one or more provisions of this By-Law.
41. **Temporary Trailer:** Home or temporary office incidental to construction on or development of the premises on which the trailer is located. 365 days temporary use in case of loss or damage by fire, flood, etc. Said temporary trailer may be located on lot.
42. **Theaters:** Shall include performing arts centers, motion picture theater, dance hall, music hall, lecture hall, or similar place of public assembly.
43. **Use:** The purpose for which a structure or lot is arranged, designed, or intended to be used, occupied, or maintained.
44. **Use, accessory:** A use incidental and subordinate to the principal use of a structure or lot, or use not the principal use which is located on the same lot as the principal structure.
45. **Use, Nonconforming:** A use lawfully existing at the time of the adoption of the By-Law or

any subsequent amendment thereto, which does not conform to one or more provisions of this By-Law.

46. **Use, Principal:** The main or primary purpose for which a structure or lot is designed, arranged, or intended, or for which it may be used, occupied or maintained under the By-Law. Any other use within the main structure or land on the same lot and incidental or supplementary to the principal use and permitted under this By-Law shall be considered an accessory use.
47. **Variance:** Such departure from the terms of this By-Law as the Board, upon appeal in specific cases, is empowered to authorize under the terms of Section IX-E.
48. **Yard:** A portion of a lot, upon which the principal building is situated, unobstructed artificially from the ground to the sky, except as otherwise provided herein. A court shall not be considered to be a yard or any part thereof.
49. **Yard, Front:** A yard extending for one full width of the lot between the front line of the nearest building wall and the front lot line.
50. **Yard, Rear:** A yard extending for the full width of the lot between the rear line of the building wall and the rear lot line. In the event of accessory building, the distance herein shall be measured from the point of said building closest to the lot line.
51. **Yard Side:** Yard extending for the full length of building between the nearest building structure and the side lot line. No accessory building is permitted in required side yard setback. *(Amended 10/24/94)*
52. **Commercial Forestry:** The growing, cutting or management of forest for the purpose of wholesale or retail sale, or distribution of trees, posts, lumber, chips, or related products.
53. **Light Industry:** Fabrication, processing or assembly employing only electric or other substantially noiseless and inoffensive motive power, utilizing hand labor or quiet machinery processes and free from neighborhood-disturbing agents such as odors, gas fumes, smoke, cinders, radiation, heat or vibration. Production of waste water containing abrasives, corrosives, heavy metals, or other chemicals, not normally associated with human sewage, must have septic systems and water available in order that adequate treatment and health factors are observed. Examples of light industry may include, but shall not be limited to, enclosed manufacturing, enclosed warehouses, public utilities, enclosed service and repair, machinery and transportation sales and services.
54. **Refuse Facility:** Dumps conducted by or for the Town of Salisbury and use of land for the disposal of refuse by the sanitary landfill method, by or for the Town, provided that the same is approved by the Board of Health and voted at Town Meeting.
55. **Refuse, Recycling Establishments:** Public or private enterprise for collecting ferrous and non-ferrous materials such as tin, aluminum, glass and paper for the purposes of recycling said refuse.

SECTION III

ESTABLISHMENT OF ZONING DISTRICTS

- A. Establishment of Districts:** The Town of Salisbury, Massachusetts, is hereby divided into nine (9) Zoning Districts to be designated as follows:

<u>FULL NAME</u>	<u>SHORT NAME</u>
Low Density Residential.....	R-1
Medium Density Residential	R-2
High Density Residential.....	R-3
Beach Commercial	BC
Commercial.....	C
Commercial II	C-2
Light Industrial.....	I
Office Park District.....	C-3
Commercial IV	C-4

B. Zoning Map:

These zoning districts are noted on a map entitled Town of Salisbury Zoning dated February 6, 2001 prepared by the Merrimack Valley Planning Commission, with the boundaries designated thereon, which Map is hereby declared to be part of this By-law and shall be on file in the office of the Building Inspector of Salisbury who shall be responsible for its maintenance and any authorized amendments thereto.

The following amendments of the zoning map were adopted on May 16, 2005:

1. The boundary of the Commercial IV District is noted on a map entitled "Rabbit Road C-4 District Boundaries" dated March 22, 2005, which is hereby declared to be part of this by-law and is on file with the Town Clerk.
2. Map 10, Lot Numbers 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, 136, 138, 139, 140, 141, 142, 153, 154, 155, 183, 190, 217, 232, 233, and 234 are included in the Commercial IV District.
3. The paper streets contiguous to Map 10, Lot Numbers 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, and 136 are included in the Commercial IV District.
4. Parts of the following lots: Map 10, Lot Numbers 143, 145, 146, 152 and 236 fronting on Old Elm Street lie outside the Commercial District. Those parts of the specified lots are included in the Commercial IV District.
5. Map 18, Lot Numbers 2 and 3 are included in the Light Industrial District.
6. Map 18, Lot Numbers 120, 119, 118, 117, and 116 in the area of High Street and Rabbit Road and Map 10, Lot Number 1 in the area of Old Elm Street are included in the Commercial District.

Salisbury Beach Overlay District

1. Beach Center Development Subdistrict: Map 32 Lot Numbers: 41, 42, 43, 44, 45, 46, 48, 50, 51, 56, 57, 58, 59, 60, 62, 66, 67, 68, 69, 365 Map 33 Lot Numbers: 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 164, 166, 167, 168, 169, 170, 171, 172, 173, 175, 186, 188, 189, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 298

2. Broadway Revitalization Subdistrict: Map 32 Lot Numbers: 54, 55, 63, 64, 65, 76, 77, 78, 79, 371, 382, Map 33 Lot Numbers: 178, 179, 180, 181, 182, 183, 184, 185

3. Oceanfront South Revitalization Subdistrict: Map 32 Lot Numbers: 70, 71, 72, 73, 74, 75, 106
Map 33 Lot Number 177

Boundaries of Districts: Any boundary designated on the Map as a street, railroad or water body shall be construed to mean the center line thereof. Any distance shown on the Map shall be measured from the center line of the boundary as indicated above. Unless otherwise indicated, all district boundaries parallel to a street shall be 400 feet deep therefrom or from any intervening parallel district boundary line. The application of the district boundary lines shall be the responsibility of the Building Inspector.

SECTION IV

INTERPRETATION AND APPLICATION

- A. Interpretation:** The provisions of the By-Law are not intended to repeal or in any way impair or interfere with any lawfully adopted By-Law, regulations, or rules. Whenever the regulations made under the authority hereof differ from those prescribed by any By-Law or other regulation, that provision which imposes the greater restriction or the higher standard shall govern.
- B. Application:** Except as herein provided, or as specifically exempted by the Zoning Act, the provisions of this By-Law shall apply to the erection, construction, reconstruction, alteration, or use of buildings and structures or use of land.

SECTION V

USE REGULATIONS

- A. Applicability of Regulations:** Except as provided in the Zoning Act or this By-Law, no building, structure, or land shall be used except for the purposes permitted in the district as described in this section. Any use not listed by similar in character, may be permitted by Special Permit, granted by the Board of Appeals.
- B. Permitted Uses:** In the following Table of Use Regulations the uses permitted by right in the district shall be designated by the letter "P". Those uses that may be permitted by a Zoning Board of Appeal's Special Permit in the district, in accordance with Section IX-F, shall be designated by the letter "S". Those uses that may be permitted by a Planning Board Special Permit in the District, in accordance with Section IX-F, shall be designated by the Letters (PB). Uses designated (-) shall not be permitted in the district.
- C. Uses Subject to Other Regulations:** Uses permitted by right or granted Special Permits shall be subject, in addition to use regulations, to all other provisions of the By-Law.
- D. Table of Use Regulations:** See Table on accompanying pages, which is declared to be part of this By-Law.

TABLE OF USE REGULATIONS

RESIDENTIAL USES	R1	R2	R3	BC	C	C2	C3	C4	I
Mobile Home Dwelling	P	P	P	P	P	P	-	P	-
One Family Detached Dwelling	P	P	P	P	P	P	-	P	-
Accessory Apartment Dwelling	S	S	S	S	S	S	-	S	-
Multi Family Dwelling	-	-	-	P	-	-	-	-	-
COMMUNITY USES	R1	R2	R3	BC	C	C2	C3	C4	I
Country, Hunting, Fishing, Tennis, or Golf Club without Liquor License	S	S	S	S	S	S	S	S	S
Church or other Religious purpose	P	P	P	P	P	P	P	P	P
Educational purpose which is Religious, Sectarian, Denominational or public	P	P	P	P	P	P	P	P	P
Historical Association or Society	P	P	P	P	P	P	P	P	P
Hospital	S	S	S	S	S	S	S	-	-
Non-Profit Recreational Facility, not including a Membership Club	P	P	P	P	P	P	-	-	-
Nursing, Rest, or Convalescent home	S	S	S	S	S	S	-	S	S
Public or Town owned power plant, water or sewer treatment plant, and refuse facility	S	S	S	S	S	S	S	S	S
Public Utility except power plant, water or sewage treatment plant, and refuse facility	P	P	P	P	P	P	P	P	P
Public Park, Conservation Area and/or preserved open space	P	P	P	P	P	P	P	P	P
Town building except Equipment garage	S	S	S	S	S	S	P	S	S
Town Equipment Garage	-	-	-	P	P	P	-	-	P
Town Cemetery, including any crematory	P	P	P	P	P	P	-	-	P
Street, Bridge, Tunnel, Railroad haul lines	P	P	P	P	P	P	P	P	P
AGRICULTURAL USES	R1	R2	R3	BC	C	C2	C3	C4	I
Agricultural, Horticulture and floriculture except for a greenhouse or stand for retail sale	P	P	P	P	P	P	P	P	P
Commercial forestry	S	S	-	S	S	S	P	S	S
Non Commercial forestry and growing of all vegetation	P	P	P	P	P	P	P	P	P
Commercial stables, Kennels, vet hospital or other similar commercial establishments in which all animals fowl or other forms of life are completely enclosed in pens or other structures	S	S	-	-	S	S	-	S	S
Raising or keeping of livestock, horses and poultry Not including the raising of swine or fur animals for commercial use	P	P	-	-	S	S	-	S	-
Temporary greenhouse or stand for retail sale of products raised primarily on the same premises	S	S	S	S	S	S	S	S	S
Year round greenhouse or stand for wholesale and retail sale of agricultural or farm products	S	S	S	P	P	P	P	P	P

COMMERCIAL USES	R1	R2	R3	BC	C	C2	C3	C4	I
Amusements	-	-	-	P	P	P	S	-	-
Automobile, repair, sales, and service	-	-	-	P	P	P	PB	-	P
Bakery	-	-	-	P	P	P	P	P	-
Campground	S	S	S	-	P	P	-	-	-
Carwash	-	-	-	P	P	P	-	-	-
Chemical Warehouse	-	-	-	P	P	P	-	-	P
Communication and T.V. Towers	S	S	S	S	S	S	S	S	S
Department Stores	-	-	-	P	P	P	PB	-	-
Fish, shellfish, and food, wholesale, retail sale, and processing free from neighborhood impacts	-	-	-	-	S	-	PB	P	P
Funeral Home	-	-	-	-	P	-	-	-	-
Home Occupations (see definitions)	S	S	S	P	P	P	PB	P	-
Laundromat	-	-	-	S	S	S	PB	-	-
Light Industry	-	-	-	-	-	-	PB	-	P
Lumber Yards	-	-	-	-	S	S	PB	-	P
Marina	S	S	S	S	S	S	-	-	-
Motels, Hotels, and cabins	-	-	-	P	P	P	PB	-	-
Motorcycle, Repair, Sales, and Service	-	-	-	S	P	P	-	-	-
Motor Freight Terminal and Warehousing	-	-	-	-	-	-	-	-	P
Nursery School or other use for day care of children operating as a business	S	S	S	S	P	P	P	P	-
Storage of Flammable Liquids	-	-	-	P	P	P	-	S	P
Storage of Flammable Liquids over 165 Gallons Class A	S	S	S	P	P	P	-	-	P
Storage of Flammable liquids under 165 gallons Class B	P	P	P	P	P	P	-	P	P
Hidden storage of vehicles, equipment, used and raw material, and structures for storing such; provided there is sufficient screening to prevent sight of such from the street and from the inhabited portion of adjacent property.	-	-	-	P	P	P	PB	P	P
Gas station	-	-	-	-	S	-	-	-	-
Product Assembly	-	-	-	-	P	-	P	P	P
Professional and Business Office Building	-	-	-	P	P	P	P	P	P
Recycling refuse establishment	-	-	-	-	-	-	-	-	P
Renting/leasing of Vehicles, equipment, Household, and functional supplies	-	-	-	P	P	P	PB	S	-
Research & Development Laboratories	-	-	-	-	P	-	P	S	P
Restaurants	-	-	-	P	P	P	P	-	-
Restaurants, Fast Food	-	-	-	P	P	P	-	-	-
Retail Stores selling food, drug, and proprietary goods	-	-	-	P	P	P	P	-	-
Roadside Stands	-	-	-	P	P	P	-	P	-
Sand or Gravel Pit	S	-	-	-	-	-	-	-	S
Signs: Flashing, Oscillating	-	-	-	P	-	-	-	-	-
Temporary Trailer (for construction purposes)	P	P	P	P	P	P	P	P	P
Theaters	-	-	-	P	P	P	P	-	-
Waterfront Marine and boat building, selling, renting, servicing, repairing, and storage.	S	S	S	S	S	S	-	S	-
Wholesale trade and distribution	-	-	-	P	P	P	PB	S	P
Storage of liquefied petroleum gas over 500 gallons	-	-	-	P	P	P	-	P	P
Storage of liquefied petroleum gas over 1000 gallons	-	-	-	S	S	S	-	-	S
Self Service Gas Station	-	-	-	-	S	-	-	-	-

PROHIBITED USES IN ALL ZONING DISTRICTS

Airport
Auto Auctions
Fur Farm
Junk Yard
Piggery
Race Track

Zoning Districts: C-4 = Commercial IV and I = Light Industrial

P = A use permitted by right in the District; S = A use which may be permitted in the District by a Special Permit from the Zoning Board of Appeals in accordance with Section IX-F; PB = A use which may be permitted in the District by a Special Permit from the Planning Board in accordance with Section IX-F; (-) = A use which is not permitted in the District.

SECTION VI

DIMENSIONAL REGULATIONS

- A. Applicability of Dimensional Regulations:** The regulations for each district pertaining to minimum lot size, minimum lot frontage, minimum front yard set back, minimum side yard set back, minimum rear yard set back, maximum percentage of lot covered by building, maximum height allowed of building, minimum number of parking spaces allowed, and signs are specified in this section and set forth in the Table of Dimensional Regulations, and subject to the further provisions of this section.
- B. Table of Dimensional Regulations:** See table on accompanying page, which is declared to be a part of this By-Law.
- C. Reduction of Lot Areas:** The lot and yard areas required for any new building or use may not include any part of a lot that is required by any other building or use to comply with any provisions of this By-Law, nor may these areas include any property of which the ownership has been transferred subsequent to the effective date of this By-Law if such property was a part of the area required for compliance with the dimensional regulations applicable to the lot from which such transfer was made.
- D. Separation of Lots:** Lots shall not be so separated or transferred in ownership so as not to comply with the provisions of this By-Law.
- E. Building in Floodway:** A building shall not be erected in a floodway or any area subject to periodic flooding, except if the first floor elevation is higher than the highest flood recorded, unless such flood elevation shall have been reduced by construction of dams at the head waters, or by other means. (Also see Section X)
- F. Accessory Buildings and Structures:** In "R", "C" and "C2" Districts. A detached accessory building or structure shall conform to the following provisions: it shall not occupy more than 25 percent of the rear yard; it shall be set back from the street line the required front yard distance for the zone in which it is located; it shall not be less than the required yard set back from any other lot line or 10 feet from any principal building or structure; and it shall not exceed 20 feet in height. An accessory building or structure attached to the principal building shall be considered as an integral part thereof and shall be subject to front, side, and rear yard requirements applicable to the principal building or structure.
- G. Exemptions: (Amendment 10/22/01)**
- Stairs
 - 25 sq. ft. of landing or deck for egress use only
 - Roof overhangs
 - Bay Windows 24 " Maximum

DIMENSION CONTROL TABLE

(Amended 5/16/05)

	R1	R2	R3	BC Com	BC Res.	C		C2		C3		C4		I	
Min Allowable Lot Size (Acres)	2	1	1/4	-	-	1/2		1		2 1/2		1		1	
Min. Allowable Frontage (feet)	200	150	40	-	-	100		150		150		100		150	
Min. Allowable Front Yard Setback (feet)	40	40	20	-	5	50		40		30		40		50	
Min. Allowable Side Yard Setback (feet)	20	20	10	*	**	Com / Com	Com/ Res	Com/ Com	Com/ Res	Com/ Com	Com/ Res	Com/ Com	Com/ Res	Com/ Com	Com/ Res
	20	20	10			20	30		30	25	25	20	30	25	100
Min. Allowable Rear Setback (feet)	20	20	10	-	**	20		20		40		20		20	
% of Building Lot Coverage Max. Allowed	20	25	60	100	90	25		25		40		40		40	
Max. Height Allowed (feet)	35	35	35	35	35	35		35		35		35		40	
Min. Number of Parking Spaces Allowed	2	2	2	-	2 per dwelling	-	5	5				2 per dwelling	COM 5	12	

DIMENSIONAL CONTROL TABLE INDEX

KEY (-) means no restrictions

Special Permit: Any use similar in character to those permitted above may be allowed by the Board of Appeals. All appeals, variances and Special Permits will be handled procedurally as defined by Chapter 40A of Mass. General Laws and Acts of 1975.

No building, Accessory or otherwise, will be allowed in any required set back area.

* In this district only, where a wooden structure is located adjacent to a wooden structure, there shall be a minimum side and rear yard set back of 10 feet. Where a commercial use is located adjacent to a residential use, there shall be a minimum side and rear yard set back 10 feet.

** The setback requirements shall be based on 10' -0" for non fire-rated structures and 5'-0" for fire resistant structures.

*** Provided the building is constructed of fire reistive materials.

There shall be provided a minimum of two parking spaces for each individual dwelling unit.

SECTION VII

NONCONFORMING USES, STRUCTURES, AND LOTS

- A. Purpose and Intent:** The provisions of this Section apply to actions in connection with nonconforming uses, structures, and lots as created by the initial enactment of this By-Law or by any subsequent amendment. It is the intent and purpose of this By-Law to discourage the perpetuity of nonconforming uses except where such extension will be in the general welfare and not harmful to surrounding land uses. The lawful use of any building or land existing at the time of the enactment of this By-Law may be continued except as otherwise provided.
- B. Extension or Alteration:** Except as hereinafter provided, this zoning By-Law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on this By-Law but shall apply to any reconstruction, extension, or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension, or structural change to a single nonconforming nature of said structure.
- Preexisting nonconforming structures or uses may be extended or altered, provided that No such extension or alteration shall be permitted unless there is a finding by the Board of Appeals that such change, extension, or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
- C. Provisions of Chapter 40A:** of the Mass. General Laws as Amended by Chapter 808 of the Acts of 1975, and as may be further amended from time to time, hereinafter referred to as the Zoning Act, with respect to various exemptions to this By-Law, are hereby adopted as part of this By-Law. (See Section VI of the Zoning Act.) Any nonconforming use and / or structure abandoned or not used for a period of two years or more shall be brought into conformance with this By-Law.
- D. Other Principles:** In no instance shall nonconforming uses, structures or lots be made more nonconforming unless the Zoning Board of Appeals (ZBA) finds that such additional nonconformity will fulfill the intents and purposes of this By-Law and will be in the general welfare. *(Added below Amended 10/25/93)*

The provisions of this subsection shall not apply to the alteration, extension or structural change to a single or two family residential structure lawfully In existence at the time of enactment of this amendment under the following circumstances:

- a. The proposed changes comply with the height restriction*
- b. The proposed charges comply with the requirement for maximum building area, or If they do not comply, the proposed changes do not result in an increase In building area on the lot.*
- c. The proposed changes do comply with the setback requirements.*
- d. Proposed changes to enlarge the structure do not prevent compliance with regulations governing the repair, expansion or replacement of septic systems, or with any other applicable laws or regulations.*

SECTION VIII

HOW BY-LAW ADMINISTERED, ENFORCED, VARIED, AND AMENDED

- A. Intent and Purpose:** The intent and purpose of this Section is to provide the specific means by which this By-Law is administered, enforced, varied, and amended, and to specify the limits of validity.
- B. Administrative Official:** The duty of administering and enforcing the provisions of the By-Law is hereby conferred upon the Inspector of buildings who shall have such powers as are conferred upon him by this By-Law, and as reasonably may be implied. He shall be appointed as presently specified by the By-Laws of the Town of Salisbury.
- C. Duties of the Inspector of Buildings:**
1. It shall be the duty of the Inspector of Buildings, or his duly authorized agents, to cause any plans, buildings, or premises to be examined or inspected to determine that they are not in violation of the provisions of this By-Law.
 2. Where the Inspector of Buildings, in the course of his duties, determines that any plans, buildings, or premises are in violation of the provisions of this By-Law, he shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such action and the penalties and remedies which may be invoked by the Town and the violator's right of appeal; all as provided for by this By-Law, and the Zoning Act.
 3. On the serving of notice by the Inspector of Buildings to the owner for any violation of any provisions of this By-Law, a Certificate of Occupancy shall be required for any further use of such building or premises.
 4. The Inspector of Buildings shall maintain a permanent public record of all matters considered, all action taken by him, and such records shall form a part of the records of his office.
 5. An individual permanent file for each application by street address for a permit provided for by this By-Law shall be established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents, maps, and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the ZBA in acting on the application; and the date the permit applied for was issued or denied by the Inspector of Buildings.
 6. The Inspector of Buildings shall prepare a monthly report for the Board of Selectmen. Said report shall cite all actions taken by the Inspector of Buildings including all referrals made by him; and the action taken by him consequent thereon. A copy of this monthly report shall also be transmitted by the Inspector of Buildings to the Board of Assessors, Planning Board and the ZBA at the same time it is transmitted to the Board of Selectmen.
 7. All other actions of the Inspector of Buildings shall be undertaken as provided for in the Zoning Act.

D. Permits:

1. It shall be unlawful for any owner or person to erect, construct; reconstruct, or alter a structure or change the use or lot coverage, increase the intensity of use, or extend or displace the use of any building or other structure on a lot without applying for and receiving from the Inspector of Buildings the required Building Permit therefore. For purposes of administration, such permit and application procedure involving a structure may be made at the same time and combined with the permit required under the Building Code. An application for a permit shall be accompanied by a plan, accurately drawn, showing the actual shape and dimensions of the lot to be built upon, the exact location of new buildings or structures to be constructed, together with the lines within which all buildings or structures are to be erected, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this By-Law.
2. The actions of the Inspector of Buildings with respect to denying or granting a Building Permit shall be governed by the provisions of the Zoning Act.
3. No building hereafter erected, altered substantially in its use or extent or relocated shall be used or occupied, and no change shall be made of the use of any building or of any parcel of land, unless a Certificate of Occupancy signed by the Inspector of Buildings has been granted to the owner or occupant of such land or building. Such Certificate shall not be granted the proposed use of land and building and all accessory uses comply in all respects with this By-Law and no use shall be made of such land or building that is not authorized by such Certificate of Occupancy.
4. Applications for Certificates of Occupancy and Compliance shall be filed coincident with the application for Building Permits and shall be issued or refused in writing for cause within five (5) days after the Inspector of Buildings has been notified in writing that the erection or alteration of such buildings has been completed. Failure of the Inspector of Buildings to act within five (5) days of receipt of said notification shall be deemed to constitute approval of the application for a Certificate of Occupancy. Buildings accessory to dwellings when completed at the same time shall not require a separate Certificate of Occupancy. Pending the issuance of a regular Certificate, a Temporary Certificate may be issued for a period not exceeding six (6) months, during the completion of alterations or during partial occupancy of a building, pending its completion if the building fails to conform to the provisions of the Building Code and state laws or of this By-Law to such a degree as to render it unsafe for the occupancy proposed.

E. Permit and Certificate Fees: Fees shall be established from time to time for this Zoning By-Law by the Board of Selectmen.

F. Violations: If the Inspector of Buildings shall be informed or have reason to believe that any provision of this By-Law has been, is being or may be violated, he shall make or cause to be made an investigation of the facts and inspect the property where the violation may exist. If he shall find any such violation, he shall serve a Notice of Violation and Order to any Owner or person responsible for such violation of the provisions of this By-Law or in violation of a Permit or Certificate issued under the provisions of this By-Law and such order shall direct the discontinuance of the unlawful action, use, or condition and the abatement of the violation within a time to be specified by the Inspector of Buildings. Any Owner who, having been served with a Notice, ceases any work or other activity, shall not leave any structure or lot in such condition as to be a hazard or menace to the public safety, health, or general welfare. Should

the Building Inspector be refused an inspection by Owner and / or person responsible for said alleged violation, the Building Permit, it shall be deemed invalid.

- G. Prosecution of Violations:** If the Notice of Violation and Order is not complied with promptly, the Inspector of Buildings shall institute the appropriate action, or proceeding at law or in equity to prevent any unlawful action, use, or condition and to restrain, correct, or abate such violation. Penalties for violations may, upon conviction, be affixed in an amount not to exceed fifty dollars (\$50.00) for each offense. Each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense.

SECTION IX

ZONING BOARD OF APPEALS

A. Within three months after the passage of this By-Law, the Board of Selectmen shall appoint a Zoning Board of Appeals (ZBA), consisting of five (5) members and two (2) associate members. The first member shall be appointed for five years, the second for four years, the third for three years, the fourth for two years, and the fifth for one year. As terms expire, appointments shall be made on a five-year basis. Vacancies shall be filled for the unexpired term by the Board of Selectmen. Associate members shall be appointed for five years. The ZBA shall, annually, elect a chairman and a clerk from its membership.

B. Powers: Under this By-Law, the ZBA shall have the following powers:

1. To hear and decide appeals.
2. To hear and decide applications for all Special Permits referred to in this By-Law.
3. To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of this By-Law.

In exercising these powers, the ZBA may, in conformity with the provisions of this By-Law and the Zoning Act, revise or affirm in whole or in part, or may modify, any order or decision, and may make such order or decision as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issue of a permit.

C. Adoption of Rules: The ZBA shall adopt rules, pursuant to the Zoning Act and not inconsistent with the provisions of the By-Law for conducting its business and otherwise carrying out the purposes of the Zoning By-Law. A copy of such rules shall be filed in the office of the Town Clerk. Meetings of the ZBA shall be held at the call of the Chairman, and also when called in such other manner as the ZBA shall determine in its rules.

D. Appeals: Any person as defined by Section VIII of the Zoning Act aggrieved by reason of his inability to obtain a Permit from the Inspector of Buildings under the provisions of this By-Law or by any order or decision of the Inspector of Buildings under the Provisions of this By-Law or by any order or decision of the Inspector of Buildings may take an appeal to the ZBA.

E. Variances: The ZBA shall have the power to grant upon appeal or upon petition a variance, from the terms of this Zoning By-Law where the ZBA finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-Law.

F. Special Permits: Certain uses, structures or conditions are designated in Section V, Table of Use Regulations as Special Permits. Further, Section V provides that all uses not specifically permitted (or prohibited) but which are similar in character to the permitted uses shall be treated as requiring a Special Permit. Upon written application duly made to the ZBA, the ZBA may, in appropriate cases, subject to the applicable conditions contained herein, in the Special Permit Table, and subject to all other reasonable conditions and safeguards, grant a Special Permit for such uses, structures or conditions.

1. Before granting an application for a Special Permit, the ZBA with due regard to the nature and condition of all adjacent structures and uses, and the district within which the same is located, shall find all of the following general conditions to be fulfilled:
 - a. The use requested is listed in the Table of use Regulations as a Special Permit in the district for which application is made or is similar in character to permitted uses in a particular district but is not specifically mentioned.
 - b. The requested use is essential and/or desirable to the public convenience or welfare.
 - c. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
 - d. The requested use will not overload any public water, drainage, or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety, or the general welfare.
 - e. Any special regulations for the use, set forth in the Special Permit Table are fulfilled.
 - f. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare of the neighborhood.
 - g. The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.
2. The ZBA shall also impose in addition to any applicable conditions specified in this By-Law such additional conditions as it finds reasonably appropriate to safeguard the neighborhood, or otherwise serve the purposes of this By-Law, including, but not limited to, the following: front, side, or rear yards greater than the minimum required by this By-Law; screening buffers or planting strips, fences, or walls, as specified by the ZBA; modification of the exterior appearance of the structures; limitation upon the size, number of occupants, method and time of operation, duration of permit, or extent of facilities; regulation of number and location of driveways, or other traffic features; and off-street parking or loading or other special features beyond the minimum required by this By-Law. Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the ZBA.
3. In order that the ZBA may determine that the above mentioned restrictions are to be met, a site plan shall be submitted in duplicate, to the ZBA by the applicant.
4. Said site plan shall show, among other things, all existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service areas, and other open uses, all facilities for sewage, refuse and other waste disposal, and for surface water drainage, and all landscape features, such as fences, walls, planting areas, and walks.

5. A person may, prior to submitting his application for a Special Permit, meet with the ZBA and orally describe his project. The ZBA may waive or modify the requirements for a detailed site plan as described above after such a meeting.
6. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit provided the ZBA finds that the proposed accessory use does not substantially derogate from the public good.

SECTION X

FLOOD PLAIN DISTRICT REGULATIONS

A. Flood Plain District: The Flood Plain District is herein established as an overlay district and includes all special flood hazard areas designated as Zone A, A1-30 and (FIRM) on the Salisbury Flood Insurance Rate Maps, dated (date voted on in the Town Meeting) and on file with the Town Clerk, Planning Board and the Building Inspector. These maps, as well as the accompanying Salisbury Flood Insurance Study, are incorporated herein by reference.

B. Development Regulations: The following requirements apply in The Flood Plain District:

1. Within Zones A1-30, all new construction and substantial improvements (the cost of which equals or exceeds 50 percent of the market value of the structure) of residential and nonresidential structures, shall have the lowest floor, including basement, elevated to or above the base flood elevation (the 100-year flood elevation designated on the FIRM) or in case of non-residential structures, be flood proofed water tight to the base flood level.
2. Within Zone A, where the base flood elevation is not provided on the FIRM, the Building Inspector shall obtain and review any already existing base flood elevation data. If the data are reasonable, they shall be used to require compliance with B-1 above.
3. Where watertight flood proofing of a structure is permitted, a registered professional engineer or architect shall certify that the methods used are adequate to withstand the flood depths, pressures and velocities impact and uplift forces and other factors associated with the 100-year flood.
4. Located within the Flood Plain District are areas designated as coastal high hazard areas (Zone V). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash, the following provisions shall apply:
 - a. All new construction shall be located land ward of the reach of the mean high tide.
 - b. The use of fill for structural support of buildings is prohibited.
 - c. Man-made alteration of sand dunes, which would increase potential flood damage, is prohibited.
 - d. All new construction and substantial improvements shall be elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest supporting member of the lowest floor (excludes the piles or columns) is elevated to or above the base flood elevation.
 - e. A registered professional engineer or architect shall certify that the structure is securely anchored in compliance with B-4 (d) so as to withstand velocity waters and hurricane wave wash.
 - f. All new construction and substantial improvements shall have the space below the lowest floor free of obstruction or be constructed with "breakaway walls" intended to collapse under stress; such temporarily enclosed space shall not be used for-human habitation.
5. Located within the Flood Plain District are areas designated as floodways. Since the floodway

is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply.

- a.** Prohibit encroachments, including fill, new construction substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the 100-year flood.
- b.** If Section 5 (a) above is satisfied, all new construction and substantial improvements shall comply with all provisions of Section B.

SECTION XB

WATER RESOURCE DISTRICT REGULATIONS

X.B.1 Purpose:

The purpose of the Water Resource District is to protect the public health by preventing contamination of the surface water and ground water resources providing existing and potential water supply for the Town of Salisbury.

X.B.2 Establishment of District:

The Water Resource District is herein established as an overlay district and includes the aquifers and aquifer recharge areas which provide water supply for the Town of Salisbury, as shown on a map entitled "Water Resource District, Town of Salisbury, Massachusetts" dated May, 1987 and on file with the Town Clerk, Planning Board, and Zoning Board of Appeals.

Where the bounds of the Water Resource District, as delineated on the Water Resource District Map, are in doubt or dispute, the burden of proof shall be upon the owners of the land in question to show where the bounds should properly be located. The town may engage a professional hydrogeologist to determine more accurately the location and extent of the aquifers and recharge areas, and shall charge the owner for all or part of the cost of the investigation.

Land in a Water Resource District may be used for any purpose otherwise permitted in the underlying district, subject to the following additional restrictions.

X.B.3 Use Regulations:

- 1. Permitted Uses:** Within the Water Resource District, the following uses are permitted, provided that all necessary permits, orders, and approvals required by local, state, and federal law shall have been obtained:
 - a.** Conservation of soil, water, plants, and wildlife;
 - b.** Outdoor active and passive recreation;
 - c.** Operation and maintenance of roads, utilities, and other structures, provided there is no significant increase in impervious pavement;
 - d.** Operation and maintenance of water bodies and water control, supply, and conservation devices;
 - e.** Residential and commercial development permitted in the underlying district provided that not more than 20 percent of a building lot is rendered impervious;
 - f.** Farming, gardening, nursery, conservation, forestry, harvesting, and grazing uses, provided that fertilizers, herbicides, pesticides, manure, and other leachable materials incidental to such uses are not stored uncovered out doors.

2. Prohibited Uses: Within the Water Resource District the following uses are prohibited;

- a. Sanitary landfill, septic lagoon, municipal or industrial wastewater treatment facility;
- b. Road salt stockpile or disposal of snow from outside the Water Resource District;
- c. Junkyard, salvage yard, or truck terminal with more than ten trucks;
- d. Gasoline station; truck, boat, or automobile repair or body shop;
- e. Commercial laundry or dry cleaning;
- f. Commercial car wash;
- g. Metal plating, finishing, or polishing;
- h. Electronic circuit assembly;
- i. Furniture stripping or refinishing;
- j. Photographic processing;
- k. Printing;
- l. Chemical or bacteriological laboratory;
- m. Any other use which involves as a principal activity the manufacture, storage, use, transport or disposal of toxic or hazardous materials.

3. Special Permit Uses: Within the Water Resource District the following uses are permitted only on the issuance of a Special Permit by the Zoning Board of Appeals:

- a. Any nonagricultural use involving the retention of less than thirty (30) percent of a lot area in its natural state, with no more than minor removal of existing trees and ground vegetation or rendering impervious more than twenty (20) percent of lot area.
- b. Any use, other than a single family dwelling, having on site disposal of domestic wastes greater than 1,500 gallons per day (gpd) as estimated by a professional engineer or registered sanitarian.
- c. Residential dwellings served by on site sewage disposal systems with less than one acre lot size.
- d. Storage of fuel or other hazardous material in quantities greater than normally associated with an allowed residential, commercial or agricultural use, provided that such storage is not the principal activity of the use.
- e. Storage of manure uncovered out of doors.
- f. Mining operations, including sand and gravel removal, except as incidental to an allowed use.
- g. Application of fertilizers, herbicides, or pesticides for non domestic or non-agricultural uses, provided that such application will not cause any significant adverse impacts on the soil, surface water, or ground water.

X.B.4 Special Permit Granting Authority:

The Special Permit Granting Authority shall be the Zoning Board of Appeals, or ZBA. A Special Permit shall be granted if the ZBA determines that the intent of this regulation as well as the specific criteria of X.B.3 above and X.B.5, following, are met. In making such determination; the ZBA shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to ground water quality which would result if the control measures failed.

Upon receipt of a Special Permit application, the ZBA shall transmit one copy each to the Planning Board, Board of Selectmen, Board of Health, Salisbury Water Supply Company, Conservation Commission, Building Inspector, Fire Chief, and Local Hazardous Waste Coordinator for their written recommendations. Failure to respond within thirty (30) days of referral of the application shall indicate lack of opposition by said agencies. The copies necessary to fulfill this requirement shall be furnished by the applicant.

In making its decision, the ZBA shall explain any departures from the recommendations of the other town agencies specified above.

X.B.5 Special Permit Criteria:

Special Permits under X.B.4 above shall be granted only if the ZBA determines, after consultation with the other agencies specified above, that ground water quality resulting from on-site wastewater disposal or other operations on-site shall not fall below federal or state standards for drinking water, or if existing ground water quality is already below those standards, on-site disposal or operations shall not result in further water quality deterioration.

In applying for a Special Permit, the applicant shall submit the following information:

1. A complete list of all chemicals, pesticides, herbicides, fuels, and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those normally associated with an allowed residential, commercial or agricultural use, accompanied by a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion, and leakage and to provide for control of spills.
2. For runoff from impervious surfaces greater than 20 percent of total lot area, evidence that such runoff will be recharged on-site and diverted towards areas covered with vegetation for surface infiltration to the maximum extent possible. Dry wells shall be used only where other methods are infeasible and shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants.
3. For disposal on-site of domestic wastewater, other than from a single family dwelling, with an estimated sewage flow of greater than 1,500 gpd, evidence of qualified professional supervision of the design and installation of the disposal system, including a narrative assessment of nitrate, sodium, coliform bacteria, and hazardous material impact, if any, on ground water quality.
4. For residential dwellings with on-site sewage disposal systems with less than one-acre lot size, evidence as specified in (3) above.
5. For outdoor uncovered manure storage and for mining operations, including sand and gravel

removal except as incidental to an allowed use, evidence from a professional engineer or hydrogeologist that such operations will not adversely affect the quantity or quality of surface water or ground water in the Water Resource District. No gravel or mineral extraction shall occur within four feet of the seasonal high ground water table.

X.B.6 Nonconforming Uses:

Any use of a building, structure, or land existing at the effective date of this bylaw or amendments thereto and not in conformance with the provisions of this bylaw shall be considered a nonconforming use. Such use shall be governed as per the provisions of Section VII of the Zoning Bylaw.

SECTION XC

FLEXIBLE RESIDENTIAL DEVELOPMENT (FRD)

(ADOPTED MAY 16, 2005)

X.C.1. PURPOSES

The primary purposes for the FRD are the following:

1. to allow for greater flexibility and creativity in the design of residential developments;
2. to encourage the permanent preservation of open space, scenic vistas, agricultural land, forestry land, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, areas of critical environmental concern, and wetlands, and historical and archeological resources, in a manner that is consistent with the Town of Salisbury Community Development Plan;
3. to encourage a more efficient and compact form of development that consumes less open land and natural materials and conforms to existing topography and natural features better than a conventional or grid subdivision;
4. to minimize the total amount of disturbance on the site;
5. to further the goals and policies of the Town of Salisbury Community Development Plan as amended from time to time;
6. to facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economic and efficient manner, that are in harmony with the architectural heritage of the Town of Salisbury; and
7. to promote affordable housing and a more diversified housing stock.

X.C.2. APPLICABILITY

1. Land Area:

- a. The proponent of any proposed residential subdivision plan in the Town of Salisbury that is on a parcel of five (5) acres or more shall submit a special permit application to the Planning Board for an FRD in accordance with the provisions of this by-law, which shall include an FRD Special Permit Plan as described below.
- b. For residential subdivisions on less than five (5) acres and/or all plans for division of land not requiring approval under the subdivision control law, M.G.L., c. 41 sec. 81P, that are restricted to residential use, an applicant may submit a special permit application for an FRD in preference to filing a conventional plan.

2. Zoning Classification: Only residential projects on tracts located in the R1, R2, C1, C2 and C4 districts are eligible for FRD.
3. Contiguous Parcels: To be eligible for consideration as an FRD, the total tract shall consist of one parcel or set of contiguous parcels.
4. Mix of Housing Types: The FRD may consist of a combination of single-family and multi-

family residential structures. Except for those FRDs composed of the housing type allowed below under Section XC.12.3; multifamily structures shall be townhouse style and not contain more than two (2) dwelling units and shall not make up more than fifty percent (50%) of the Basic Maximum Number.

5. Land Division: To be eligible for consideration as an FRD, the tract may be a subdivision or a division of land pursuant to M.G.L., c. 41, sec. 81P, provided, however, that an FRD may also be permitted where intended as a condominium on land not so divided or subdivided.
6. Conventional Subdivision Simultaneous Filings: The requirement to apply for an FRD special permit shall not prohibit an applicant from choosing to pursue conventional subdivision approval. A "conventional subdivision" shall be defined as a subdivision (as defined by M.G.L., c 41 sec. 81L) which does not reflect the FRD special permit principles. The only requirement that must be met in these cases is to submit a complete FRD application and initiate the FRD process. The decision to either pursue the FRD special permit or the conventional subdivision is outlined in Section XC.6.8. (Procedures).

X.C.3. SPECIAL PERMIT REQUIRED

The Planning Board may authorize an FRD pursuant to the grant of a special permit. The Planning Board will act as the special permit granting authority for all FRD applications. Such special permits shall be acted upon in accordance with the provisions of this By-law and Section IX.F of the Town of Salisbury Zoning By-law. With respect to Special Permit applications under this Section, the Planning Board shall also have all the powers and duties of the Zoning Board of Appeals under Section IX.F of this By-Law.

X.C.4. PRE-APPLICATION CONFERENCE

The applicant for an FRD is strongly encouraged to attend a pre-application conference at a regular business meeting of the Planning Board as outlined in the Planning Board's Rules and Regulations.

X.C.5. DESIGN PROCESS

At the time of the application for a special permit for an FRD in conformance with Section XC.6. of this By-law, applicants are required to demonstrate to the Planning Board that the following four-step design process was performed by a certified landscape architect, or by a multi-disciplinary team of which one member must be a certified landscape architect ("Qualified Design Team"), and considered in determining the layout of proposed streets, house lots, and open space.

1. Step One: Identifying Conservation Areas and the Potentially Developable Area. The certified landscape architect or Qualified Design Team shall first identify and delineate two categories of conservation areas at the site, as follows: (1) Primary Conservation Areas, consisting of those areas protected by federal, state, or local laws, including but not limited to wetland resource areas, areas of critical environmental concern, outstanding resource waters, and estimated rare species habitat (as designated by Natural Heritage and Endangered Species Program); and (2) Secondary Conservation Areas, consisting of those elements of the natural landscape that are not protected by law, but the maintenance of which in their natural state would provide environmental, aesthetic, pastoral, historical, or other value to the environment or community, such as flood hazard areas, floodplains steep slopes (typically greater than twenty five percent), mature woodlands (non-invasive trees with caliper of twenty inches or greater (measured at four feet)), wetland buffer zones, vernal pools, prime farmland, large open meadows, stone walls, critical wildlife habitats, priority habitats (as designated by Natural Heritage and Endangered Species Program) and

important cultural features such as historic and archeological sites, heritage landscapes and scenic views. The certified landscape architect or Qualified Design Team shall then delineate the Potentially Developable Area, which, to the maximum extent feasible, shall consist of land outside identified Primary and Secondary Conservation Areas.

2. Step Two: Locating House Sites. The certified landscape architect or Qualified Design Team shall then locate the approximate sites of individual houses within the Potentially Developable Area and delineate the private yards and shared amenities, so as to reflect an integrated neighborhood that conforms with the existing topography and natural features, with emphasis on consistency with the Town's historical development patterns and heritage.
3. Step Three: Aligning the Streets and Trails. The certified landscape architect or Qualified Design Team shall then align streets to access the house lots and lay out sidewalks and walking trails to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
4. Step Four: Lot Lines. If applicable, the certified landscape architect or Qualified Design Team shall then delineate the lot lines according to Section 8 of this By-law.

X.C.6. PROCEDURES

1. An application for a special permit for an FRD, or for an amendment thereto, shall include, among other supporting information, an FRD Special Permit Plan. The FRD Special Permit Plan submittal shall consist of a Sketch Plan and a Conventional Subdivision Yield Plan as described in the Town of Salisbury FRD Rules and Regulations
2. As part of the application process, the applicant shall deliver copies of the FRD special permit application and plans to local boards, town departments, and committees according to the Planning Board's Rules and Regulations. Such reviewing boards and officials are given 14 days within which to respond to the Planning Board with comments and/or recommendations.
3. The Planning Board shall, in compliance with M.G.L. c. 40A, sec. 9, hold a public hearing on the FRD Special Permit application within sixty-five (65) days from the date of filing of such application.
4. The Planning Board shall render a decision on the FRD Special Permit application within ninety (90) days from commencement of the public hearing unless the applicant consents to an extension.
5. Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing process. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or his or her agents if requested by the applicant.
6. The Planning Board may engage technical experts, at the applicant's expense, as is reasonably necessary in connection with its review of the applicant's proposed plan(s). Project fees are outlined in the Planning Board's Rules and Regulations.
7. The procedural and substantive special permit requirements set forth in this Section shall be in addition to any other requirements of the Subdivision Control Law and other provisions of this By-law.
8. Relationship Between the FRD Special Permit Plan and a Conventional Definitive Subdivision Plan filed simultaneously.

- a. If the applicant has also submitted a definitive subdivision plan, as outlined in Section XC. 2.6., at the same time as its application for an FRD special permit, the Planning Board shall hold concurrent public hearings on both plans.
- b. If the definitive subdivision filing shows a conventional subdivision as opposed to an FRD subdivision, the Planning Board shall first, prior to the close of the public hearings, recommend which plan it considers most beneficial to the Town and then the applicant shall, prior to the close of the public hearings, elect and advise the Board in writing which plan he or she wishes to pursue. The applicant may then withdraw the obsolete application with the Board's approval, or the Board may continue with the approval process for both applications if practicable.

9. Relationship Between the FRD Special Permit Plan and FRD Definitive Subdivision Plan.

- a.** All FRD special permits issued by the Planning Board shall, by virtue of this provision, include a condition that an FRD Definitive Subdivision Plan shall substantially comply with an approved FRD Special Permit Plan and special permit conditions before receiving Planning Board approval. The Planning Board may hold concurrent public hearings for the FRD special permit and the FRD Definitive Subdivision Plan.
- b.** An FRD Definitive Subdivision Plan shall be considered not to substantially comply with the FRD Special Permit Plan if the Planning Board determines that any of the following changes exist:
 - (i)** An increase in the number of building lots or dwelling units;
 - (ii)** a significant decrease in the open space acreage and/or a significant change in the open space quality or configuration;
 - (iii)** a significant change in the lot or road layout;
 - (iv)** a significant change in the general development pattern, which is contrary to or inconsistent with the primary purposes of an FRD, as specified in Section 1 of this By-law;
 - (v)** a significant change to the storm water management facilities; and/or,
 - (vi)** a significant change in the wastewater management systems.
- c.** If the Planning Board determines that the FRD Definitive Subdivision Plan does not substantially comply with the FRD special permit, the Board may deny the FRD Definitive Subdivision Plan.
- d.** The Planning Board may conditionally approve an FRD Definitive Subdivision Plan that does not substantially comply with the FRD special permit so long as the conditional approval does not violate the purposes and intent of this By-law. However, such conditional approval must identify where the plan does not substantially comply with the FRD special permit and shall be conditional upon the applicant applying for, and the Planning Board granting, an amendment to the FRD special permit such that the FRD special permit is consistent with the significant changes identified by the Planning Board. The conditional approval shall also require that the applicant file its application for an amendment to the FRD special permit within a specified time period.

- e. The public hearing on the application for an amendment to the FRD special permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the FRD Definitive Subdivision Plan. The Planning Board may only review and consider factors and impacts associated with the significant changes in deciding whether to grant an amendment to the FRD special permit.

10. Concurrent Public Hearings are allowed for Site Plan Review and Definitive Subdivisions when, and if, they will be required subsequent to FRD Special Permit Approval. In these cases, definitive plans and site plans may be revised to reflect the FRD process up until the public hearings are closed. The FRD Special Permit public hearing shall be closed and the Planning Board shall vote a final decision regarding the FRD Special Permit before the Public Hearings for either the definitive plan and/or site plan are closed.

11. Substantial progress toward implementation of the approved FRD special permit must occur within two years from the date of Planning Board approval which shall not include such time required to pursue or await the determination of an appeal from the grant of the FRD special permit which is referred to in M.G.L., c.40A s.17, or the approval becomes void. Extensions may be granted at the discretion of the Planning Board if the applicant submits proof, in the form of a written narrative, that substantial progress has been made.

X.C.7. CONVENTIONAL SUBDIVISION YIELD PLAN - BASIC MAXIMUM NUMBER OF LOTS/DWELLING UNITS

The basic maximum number or density, as described herein, shall be derived from and delineated on a Conventional Subdivision Yield Plan (hereinafter, "Basic Maximum Number"). In the case of a site being divided or subdivided, the Conventional Subdivision Yield Plan shall show the maximum number of lots that could be deemed practicably buildable upon the site under a conventional subdivision process according to the Rules and Regulations Governing the Subdivision of Land in the Town of Salisbury and all other applicable state and local rules and regulations. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots. The Planning Board may request further information related to the proposed yield, including but not limited to an approved wetland and resource delineation, soil tests, percolation tests reasonably needed to determine soil suitability, and availability of Town provided sewer and water. The determination of yield shall set the amount of lots (or dwelling units) submitted in the Sketch Plan, not including increased units allowed under Section X.C.12 of this By-law.

X.C.8. REDUCTION OF DIMENSIONAL REQUIREMENTS

The Planning Board encourages applicants to modify lot size, shape, and other dimensional requirements for lots within an FRD, subject to the following limitations:

- 1.** Lots having reduced area or frontage shall not have frontage on a street other than a street created by the FRD; provided, however, that the Planning Board may waive this limitation to the extent it determines that such waivers will substantially further the purposes and intent of this By-law.
- 2.** At least fifty percent (50%) of each required setback for the applicable zoning district shall be maintained in the FRD; provided, however, that the Planning Board may further reduce the applicable setbacks to the extent it determines that such reduction(s) will substantially further the purposes and intent of this By-law.
- 3.** Minimum lot size shall be ten thousand (10,000) square feet; provided, however, that the Planning Board may reduce this minimum lot size to the extent it determines that such

reduction(s) will substantially further the purposes and intent of this By-law.

X.C.9. OPEN SPACE REQUIREMENTS

1. A minimum of fifty percent (50%) of the tract shown on the development plan shall be open space and must be preserved as such in perpetuity in accordance with this Section.
2. The ratio of uplands to wetlands within the proposed open space area shall be equal to or greater than the ratio of uplands to wetlands on the entire tract, provided, however, that the Planning Board may allow a lower ratio if it determines that doing so will substantially further the goals of this By-law and otherwise be in the best interests of the community. Wetlands are considered resource areas as defined by Section 310 of the code of Massachusetts Regulations.
3. The open space shall be contiguous and may be composed of more than one lot. Contiguous shall be defined as being connected. Open space will still be considered connected if it is separated by a roadway or driveway created by the FRD.
4. The open space shall be, to the greatest extent practicable, accessible to the general public, and not for the exclusive use of a homeowner's association or non-profit organization. For open space maintained for active agricultural purposes, public access may be limited or completely excluded.
5. The open space shall be suitable for, and protected and maintained for either wildlife habitat, conservation, historic preservation (landscapes and/or structures), outdoor education, passive and limited active outdoor recreation, park purposes, agriculture, horticulture, forestry, and/or a combination of these uses. It shall also be served by suitable access for such purposes. The Planning Board may permit up to five percent (5%) of the open space to be paved (pervious "paving" materials are encouraged) or built upon for structures accessory to the dedicated use or uses of such open space (for example, pedestrian walks and bike paths). Parking areas and areas used for vehicular access or egress shall not constitute open space.
6. At the discretion of the Planning Board subsurface wastewater and stormwater management systems serving the FRD may be located within the open space only if the open space is to be maintained and owned by a corporation or trust according to Section XC.9.7.c below. If the subsurface system is contained on a separate lot within the open space, the remainder of the open space may be conveyed to the Town or a nonprofit organization according to Section XC.9.7.a-b below. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required unless these systems are determined by the Planning Board to be "soft" (non-structural), natural-like stormwater management systems that do not create impervious surfaces, that enable infiltration and that are otherwise compatible with the contemplated uses of the adjacent open space.
7. The open space shall either be subject to a recorded conservation restriction enforceable by the Town providing that such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein, and maintained in a manner which will ensure its suitability for its intended purposes, or, at the Planning Board's election, shall be conveyed to one of the following:
 - a) The Town or its Conservation Commission;
 - b) a nonprofit organization, the principal purpose of which is the conservation of open

space and any of the purposes for such open space set forth above; or

- c) a corporation or trust owned jointly or in common by the owners of lots within the FRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities if the trust or corporation fails to provide adequate maintenance and deemed to have granted the Town an easement for this purpose. In such event, the Town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. The trust or corporation shall be liable to the Town for the reasonable expenses associated with such maintenance performed by it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

Any such conservation restriction and/or conveyance shall be in a form satisfactory to Town Counsel and the Planning Board and shall be completed and recorded and evidence thereof shall be submitted to the Planning Board and the Building Inspector prior to issuance of the first occupancy permit.

X.C.10. DESIGN STANDARDS

The Town of Salisbury Planning Board may, after proper notice and public hearing, adopt Rules and Regulations that govern Generic and Site Specific Design Standards relative to the development and design process. These design standards shall include but not be limited to: tree and soil removal, streets, landscaping, mix of housing types, architectural style, parking, buffer areas, drainage, screening, common driveways and trails.

X.C.11. DECISION OF THE PLANNING BOARD

The Planning Board may grant a special permit for an FRD if it determines that the proposed FRD has less detrimental impact on the tract and advances further the interests of the community than a conventional development proposed for the tract, after considering the following factors:

1. whether the FRD achieves greater flexibility and creativity in the design of residential developments than a conventional plan;
2. whether the FRD promotes permanent preservation of open space, scenic vistas, agricultural land, forestry land, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, areas of critical environmental concern, and wetlands, and historical and archeological resources in a manner that is consistent with the Town of Salisbury Community Development Plan;
3. whether the FRD promotes a more efficient and compact form of development that consumes less open land and natural materials and conforms to existing topography and natural features better than a conventional subdivision;
4. whether the FRD reduces the total amount of disturbance on the site as compared with a conventional subdivision;

5. whether the FRD furthers the goals and policies of the Town of Salisbury Community Development Plan as amended from time to time;
6. whether the FRD facilitates the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner than a conventional subdivision plan;
7. whether the FRD Special Permit Plan and other supporting documentation complies with all provisions of this By-law;
8. whether the proposed construction of housing, landscape and streetscape is in harmony with the architectural heritage and historic character of the Town of Salisbury;
9. whether the FRD promotes affordable housing and a more diversified housing stock.

X.C.12. INCREASES IN PERMISSIBLE DENSITY

The Planning Board at its discretion may award a density bonus for an FRD to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the FRD shall not, in the aggregate, exceed thirty-five (35%) of the Basic Maximum Number. Computations shall be rounded to the next highest number. Such a density bonus may be awarded in the following circumstances only if the Planning Board determines that the proposed development is in substantial conformance with the purposes and intent of this Bylaw:

1. For each set aside of an increased ten percent (10%) of open space over the minimum fifty percent (50%) open space set aside the Planning Board may award a bonus of ten percent (10%) of the Basic Maximum Number, up to a maximum bonus of 20%.
2. For every one dwelling unit in a development that is legally and perpetually restricted to occupancy by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, and is eligible for inclusion in the Chapter 40B Subsidized Housing Inventory through the Local Initiative Program under G.L. c. 40B, sec. 20-23, in excess of the number of affordable housing units required by any Town of Salisbury inclusionary housing by-law, the Planning Board may award a two (2) dwelling unit density bonus. Such additional affordable housing units shall comply in all respects with and be subject to the terms of the inclusionary housing by-law; provided that, if no such by-law is in effect, the Planning Board's FRD special permit shall establish the terms governing the construction and marketing of such affordable housing units.
3. The Planning Board may authorize a density bonus of up to 25% if the applicant proposes a development comprised entirely of townhouse dwellings constructed in a New England village style of architecture that are legally and perpetually restricted to occupancy by persons over the age of fifty-five. Multi-family structures of not more than four (4) units are permitted in such a development if all units are restricted to occupancy by persons over the age of fifty-five.

X.C.13. ADOPTION OF RULES AND REGULATIONS

The Planning Board may, after notice and hearing, adopt rules and regulations to implement the provisions of this By-law, including but not limited to specifying the content and number of required plans, application procedures, filing and review fees, design criteria, development standards, and other general requirements consistent with this By-law.

SECTION XD

ACCESSORY APARTMENTS

X.D.1: Purpose:

The special regulations contained in this section have been enacted for the purpose of encouraging the construction of a limited number of housing units suitable for occupancy by persons that may not need or afford single family detached housing, while ensuring compliance with local planning standards and policies concerned with land use, building design, and requirements of the health, safety, convenience and general welfare of the inhabitants of the Town.

X.D.2. Approving Authority:

An owner or owners of a single family dwelling may, after consultation with the Planning Board, apply to the Board of Appeals for a special permit for the construction and occupancy of an accessory dwelling unit as part of the principal residential structure, the accessory dwelling unit thus created being hereinafter referred to in this subsection as an apartment. The following procedural requirements shall be in addition to the general requirements for a special permit specified in IX.F.

X.D.3: Standards and Conditions

After notice and public hearing, and after due consideration of the reports and recommendations of the Planning Board and the Board of Health the Board of Appeals may grant such a special permit provided that:

1. The apartment is accessory to the principal residence. The floor area of the apartment shall not be more than 900 total square feet for all new construction or additions to existing residential structures and the total area of the enclosed space in all buildings on any lot does not exceed 25% of the area of the lot.
2. Either the apartment or the principal residence is occupied by the owner of the lot on which the apartment is to be located, except for bonafide temporary absences.
3. Adequate provision has been made for the disposal of sewage, waste, and drainage generated by the occupancy of such apartment in accordance with the requirements of the Board of Health and the sewer commission, including the provision of a separate septic system meeting title 5 requirements if a sewerage connection is not available.
4. Adequate provision has been made for ingress and egress to the outside from such apartment.
5. The construction and occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located or injurious to persons or property.
6. The lot on which the apartment and principal residence are located contains at least 20,000 square feet.
8. Adequate provision has been made for off street parking of motor vehicles in such a fashion as is safe and is consistent with the character of a single family residence. Parking shall be provided at least at a rate of two spaces per dwelling unit.
9. There is no other apartment on the lot on which the apartment is to be located.

X.D.4: Coordination and Decisions:

In order to insure compliance with Section X.D.3. above, the applicant shall obtain and submit to the Board of Appeals prior to the hearing, a written report of the Board of Health certifying that the conditions of Section X.D.3. have been met. The Board of Health may supplement its report within five days after the bearing. In connection with an application for a special permit under this section, the applicant shall consult with the Planning Board prior to the hearing and the Planning Board shall submit, in writing, prior to the hearing, its recommendation and report to the Board of Appeals. The Planning Board may supplement its report within five (5) days after the hearing. The report of the Planning Board shall include as a minimum:

1. A determination of the area of the lot on which the apartment is located.
2. A general description of the neighborhood in which the lot lies and the effect of the proposed apartment on the neighborhood.
3. The Planning Board's recommendations as to the advisability of granting the special permit and as to any restrictions which should be imposed as a condition of such permit.

The Board of Appeals shall give due consideration to the report of the Planning Board and, where its decision differs from the recommendation of the Planning Board, shall state the reasons therefore in writing. In rendering its decision. the Board of Appeals may impose special conditions and / or time limits on the permit.

SECTION XE
SALISBURY BEACH OVERLAY DISTRICT

(ADOPTED MAY 16, 2005)

1. **Purpose:** The Salisbury Beach Overlay District is intended to spur redevelopment of underutilized beachfront commercial property, to establish design guidelines for new development, to unlock the potential of creative development and architecture, to enhance the value of land and buildings, to provide a foundation for long term private re-investment and create incentives for new mixed-use development while preserving the character of this historically lively oceanfront district at Salisbury Beach.
2. **Boundaries:** The boundary of the Salisbury Beach Overlay District is shown on the Salisbury Beach Overlay District Map, which map is hereby incorporated in and made part of this section. The Salisbury Beach Overlay District is comprised of the following three overlay subdistricts, which are delineated on the Salisbury Beach Overlay District Map:
 - A. **Beach Center Development Subdistrict:** This overlay subdistrict is generally comprised of certain parcels along Oceanfront North, Ocean Avenue, Railroad Avenue, Driftway, Central Avenue, Shea Street, North End Boulevard and Cable Avenue.
 - B. **Broadway Revitalization Subdistrict:** This overlay subdistrict is generally comprised of certain parcels along Broadway.
 - C. **Oceanfront South Revitalization Subdistrict:** This overlay subdistrict is generally comprised of certain parcels along Oceanfront South.
 - D. **Overlay District Map and Lot Listing:** The Salisbury Beach Overlay District, the Beach Center Development Subdistrict, the Broadway Revitalization Subdistrict and the Oceanfront South Revitalization Subdistrict are delineated on the Salisbury Beach Overlay District Map and the lot listing attached as Exhibit I.
3. **Existing Zoning:**
 - A. The Salisbury Beach Overlay District shall be overlaid over the existing Beach Commercial District within the boundaries shown on the Town of Salisbury Zoning Map. The owners of property in the Salisbury Beach Overlay District shall continue to possess all current zoning rights and be subject to the requirements applicable in the Beach Commercial District. In the event an owner desires to construct a building greater than 35 feet in height, as defined in Section IIC.16 of the Zoning By-Law, or to use his property for mixed-use development, as defined in Section 4 herein, the rules and regulations of the Salisbury Beach Overlay District shall apply and by filing an application for site plan review for a development subject to such rules and regulations the owner shall be deemed to accept and agree to them. It is intended that the Zoning Board of Appeals shall not grant height variances for development of habitable space over a height of 35 feet in the Beach Commercial District that would exempt the development from the Salisbury Beach Overlay District. Where the Salisbury Beach Overlay District provisions are silent on a zoning rule or regulation, the requirements of the underlying Beach Commercial District zoning shall apply.
 - B. **Underlying Zoning:** The underlying zoning for the Beach Commercial District shall remain an integral part of the Salisbury Zoning By-Law and shall neither be modified, repealed nor amended by this Section.
4. **Definitions:** Definitions of the underlying Beach Commercial District shall apply to all developments subject to the Salisbury Beach Overlay District by-law, except for the following:

- A. Height: The vertical distance from the top of the lowest horizontal structural support member (excluding grade beams, crossbracing and other foundation elements) as stipulated by the state building code for construction in the flood hazard zone in which the property is located to the average height of the main roof structure. The referenced elevation for the lowest horizontal structural support member shall be based on the minimum height so stipulated by the state building code, even if the actual elevation of the lowest horizontal structural support member is higher.
 - B. Mixed-Use Development: Development that contains a combination of residential use and one or more permitted principal commercial uses which are retail and/or professional in nature (a combination of commercial parking facilities and residential uses shall not constitute a mixed use).
 - C. Habitable Space: An area of any structure that is legally accessible and intended for human occupancy for residential or commercial uses. Mechanical rooms, parking areas, storage areas and other passive accommodations shall not constitute habitable space.
 - D. Parking Space: An on-site, or off-site, space having an area of not less than 162 square feet, with minimum dimensions of 9 feet wide by 18 feet long measured from center to center.
5. **Permitted Uses**: Uses permitted in the Salisbury Beach Overlay District shall include all uses permitted in the underlying Beach Commercial District, except those specified in Section 6 herein. Mixed-Use Development shall be a permitted use. Fish and shellfish, wholesale and retail sale, may be permitted by a Special Permit granted by the Zoning Board of Appeals.
6. **Prohibited Uses**: In addition to those uses prohibited in the underlying Beach Commercial District, the following additional uses shall be prohibited in the Salisbury Beach Overlay District:
- A. Drive-thru retail establishment: any commercial use which utilizes a vehicular drive-up window.
 - B. Casino: any facility or establishment where any gambling or gaming occurs, with the exception of arcade type establishments which tender coupons or tokens for on-site redemption for non-cash prizes or novelties. Gambling and gaming include, without limitation, any other game of chance or skill, or both, played with cards, with dice or with any mechanical, electro-mechanical or electronic device or machine for currency, check, credit, or any other thing of value, including, without limitation, roulette, twenty-one, blackjack, craps, poker, slot machines, and any other electronic gaming devices and any other games classified as class II or class III gaming under the Indian Gaming Regulatory Act, U.S.C. Section 2701 et seq., but excluding the game of bingo conducted pursuant to Massachusetts General Laws Chapter 271, any lottery game conducted by the state lottery commission in accordance with General Laws Chapter 10, Section 24, and games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.
 - C. Automobile repair, sales, and service
 - D. Carwash
 - E. Chemical Warehouse
 - F. Motorcycle repair, sales and service

7. **Dimensional Regulations.** Dimensional regulations of the underlying Beach Commercial District shall apply in the Salisbury Beach Overlay District, except for the following:

- A. Maximum Height Allowed: 65 feet with the exception that unoccupied architectural appurtenances to which there is no permanent access (cupolas, spires, chimneys, flagpoles, etc.) and comprising not more than 25% of the building footprint in plan view shall be exempt. Under no circumstances shall any structure have more than 5 floors of habitable space; nor shall the floor of the highest occupied floor exceed a height of 49 feet.
- B. Off-Street Parking Requirements: 2 on-site spaces are required per dwelling unit except where the property is used for mixed-use development in which event the parking requirements of 7C shall apply.
- C. Mixed-Use Development: To encourage mixed-use development, or the potential for future conversion to mixed use, the following requirements shall apply:
 - i. Beach Center Development Subdistrict:
 - 1. Mixed-use development is optional in this subdistrict.
 - 2. Lots used for mixed-use development and having frontage of 100 feet or less shall contain a minimum of 20% gross floor area of commercial use (other than parking) on the ground floor level.
 - 3. Lots used for mixed-use development and having frontage of more than 100 feet shall contain a minimum of 15% gross floor area of commercial use (other than parking) on the ground floor level.
 - 4. Mixed-use development shall have a reduced minimum off-street parking requirement of 1 on-site parking space per dwelling unit.
 - ii. Broadway Revitalization Subdistrict:
 - 1. Mixed-use development shall be required in this subdistrict.
 - 2. Lots with frontage of 100 feet or less shall contain a minimum of 20% gross floor area of commercial use (other than parking) on the ground floor level.
 - 3. Lots with frontage of more than 100 feet shall contain a minimum of 15% gross floor area of commercial use (other than parking) on the ground floor level.
 - 4. Off-street parking requirement: A minimum of 1 on-site parking space is required per dwelling unit.
 - iii. Oceanfront South Revitalization Subdistrict:
 - 1. Mixed-use development is optional in this subdistrict and is encouraged.
 - 2. Lots with frontage of 100 feet or less shall contain a minimum of 20% gross floor area of habitable space on the ground floor level which shall be elevated to the minimum elevation stipulated by the state building

code and shall include a ceiling height of not less than 13 feet measured floor to floor.

3. Lots with frontage of more than 100 feet shall contain a minimum of 15% gross floor area of habitable space on the ground floor level which shall be elevated to the minimum elevation stipulated by the state building code and shall include a ceiling height of not less than 13 feet measured floor to floor.
4. Off-street parking requirement: A minimum of one on-site parking space is required per dwelling unit.

D. Hotel and Motel Uses: Hotel or Motel developments shall provide a minimum of one (1) parking space per room, all of or part of which may be off-site anywhere in the Beach Commercial District.

E. Upper Floor Setbacks: A building with a height in excess of 35 feet shall have an upper floor minimum setback in the front façade of at least five feet commencing no higher than 35 feet with the exception of access elements (stairways or elevator shafts) and unoccupied architecture features not to exceed 25% of the front façade area, in aggregate.

8. **Infrastructure Improvements Fund**: For any development utilizing the Salisbury Beach Overlay District, the applicant shall make payments to the Town as set forth in Sections A and B below to the Salisbury Beach Overlay District Public Improvements Fund. This fund, administered by the Town Manager, shall be used for qualified public capital improvements to any area open to the general public within the Salisbury Beach Overlay District, including, but not limited to, utility upgrades, sidewalks, streets, period lighting, landscapes, hardscapes, boardwalks, benches or canopies. The fund shall be a special revolving account separate from the Town's General Fund. Water and sewer improvements shall not be considered qualified improvements for the purpose of this clause as those facilities are addressed under a different fund.

A. Town Administered Improvements:

A one-time payment equal to \$3,000 per permitted dwelling unit shall be paid to the Town of Salisbury Beach Overlay District Public Improvements Fund. Payment shall be made with respect to each unit prior to issuance of an occupancy permit for the unit; provided that payment may be made at the time of conveyance of each unit to an end user or upon occupancy by any tenant if appropriate security arrangements to guarantee such payment have been made as part of the site plan review process for the development. Such payments shall not exempt developers from providing any on-site or pedestrian or vehicle-related improvements that are required as part of the site plan review process.

To guide and prioritize public infrastructure improvements a Public Realm Infrastructure Investment Plan identifying and estimating the costs of the desired improvements shall be prepared and maintained by the Town Manager. Such plan and changes in it shall be subject to consultation with the Planning Board.

B. Developer Administered Improvements:

As an alternative to, or in partial satisfaction of, the required contributions to the Town of Salisbury Beach Overlay District Public Improvements Fund, with the written approval of the Town Manager, a developer, or group of developers, may perform public improvements

included in the Public Realm Infrastructure Investment Plan, the cost of which will be credited against the infrastructure contribution per dwelling unit specified above. Creditable public improvements shall be agreed upon as part of the site plan review process and shall consist of capital improvements to any property which is open to the general public, but shall not include replacement of existing sidewalks and/or curbing along the frontage of a proposed development which shall be the responsibility of the developer. The developer shall be credited an amount equal to 115% of the direct cost of all qualified public improvements performed in advance of unit conveyances or occupancy and for which reasonable proof of actual cost is provided to the Town Planner. Any dispute as to the final amount credited to the developer for approved public improvements shall be decided by the Town Manager whose decision shall be final and binding. The developer shall be required to post a 100% performance and payment bond satisfactory to the Planning Board, with advice from the Town Planner, prior to undertaking any of the improvements contemplated herein.

9. **Site Plan Review:** All projects developed within the Salisbury Beach Overlay District shall be subject to the Site Plan Review procedures of the Planning Board as provided in Section XXI of the Zoning By-law as well as review by the Design Review Committee as outlined in Sections 10 and 11 of this by-law. Prior to the Planning Board approving any application for a development plan under this by-law, the Board must find that
- A. The plan meets the planning standards established in Section XXI of the Zoning By-law and the Design Guidelines established in Section 11.
 - B. The proposed development plan is consistent with the Public Realm Infrastructure Investment Plan for the Beach Commercial District.
 - C. Proposed elevations and drainage improvements are consistent with Federal, State and local storm damage prevention and stormwater control guidelines or regulations.
 - D. Required contributions will be made to the Salisbury Beach Overlay District Public Improvements Fund and to the Town's utility Access Fee funds.

The Planning Board's approval and any conditions of the approval of any application for site plan review of a development under this by-law shall be submitted in writing to the Building Inspector, the Applicant and the Town Clerk. No occupancy permit shall be issued for any building or structure or portion thereof until all conditions of the Planning Board's site plan approval have been met and until a certificate of completion, in a form approved by the Planning Board, is completed and signed by the Board's inspector.

10. **Design Review Committee:** A Design Review Committee is hereby created to review all site plan review applications submitted to the Planning Board for developments subject to the Salisbury Beach Overlay District by-law. The Design Review Committee shall review applications with regard to compliance with Guidelines enumerated in Section 11 herein.

- A. Application: Any site plan review application submitted hereunder shall be subject to endorsement by the Design Review Committee; and by virtue of having applied under the provisions of the Salisbury Beach Overlay District, all applicants thereunder agree and authorize that the lack of such endorsement may (but not necessarily shall) form the basis of site plan review denial by the Planning Board.
- B. Composition: The Design Review Committee shall be appointed by the Town Manager and shall consist of three persons, qualified by training, experience, background and/or demonstrated performance to advise on such matters.
 - i. Each member's term shall be for three consecutive fiscal years, except that 2 of the first 3 members chosen shall be for one and two years respectively such that

every year one position shall become open. The initial terms and all subsequent terms shall expire on June 30. Every member serves at the pleasure of the Town Manager and may be replaced at any time with reasonable cause if the Town Manager determines that it is in the best interest of the Town to do so. Each member's term shall be for three consecutive fiscal years.

- ii. Each member shall serve without compensation.
- iii. The Committee shall not consider mechanical or regulatory issues and shall rely on the interpretation of the Building Inspector as to zoning by-law issues.

C. Duties of the Design Review Committee: The Committee shall review Salisbury Beach Overlay District development applications with respect to the Design Guidelines stipulated in Section 11 herein.

D. Procedures:

- i. The Committee shall serve in an advisory capacity and shall make recommendations of its findings to the Planning Board.
- ii. The Committee shall have no "permitting" authority.
- iii. The Committee shall meet publicly to consider the Design Review aspect of all site plan review applications submitted to the Planning Board under the Salisbury Beach Overlay District. Three copies of each complete application shall be provided to the Committee upon its acceptance for filing by the Planning Board. Meeting agendas shall be posted and sent to the applicant at least 48 hours before any scheduled meeting.
- iv. The Committee shall render its decision in writing with supporting rationale within 30 days of submission of the complete site plan review application, unless the review period is extended by agreement with the applicant. Applicants are encouraged to confer with the Committee informally prior to formal submission.
- v. The decision of the Committee shall be based upon substantial compliance with the Design Guidelines enumerated herein.

E. Design Review Criteria: In order to judge substantial compliance with the design guidelines objectively, the following category chart shall apply. Each category of Guideline compliance must be met.

Category #1	Guideline A, B, C, D, E, Q, R, S.	MANDATORY
2	Guideline F, G, H.	2 Out of 3
3	Guideline I, J.	1 Out of 2
4	Guideline K, L, M.	2 Out of 3
5	Guideline N, O, P.	2 Out of 3

F. Substantial Compliance: An applicant shall be deemed to be in substantial compliance when the application achieves the minimum compliance requirement in each of the above categories.

11. **Design Guidelines:** As part of the required Site Plan Review process, applicants seeking to utilize the Salisbury Beach Overlay District shall submit to the Design Review Committee, as part of the site plan review application to the Planning Board, text narrative, plans, elevations, and/or section drawings in accordance with the following guidelines:

- A. The design of buildings, structures and site layout shall follow "new urbanism" principles and be reflective of both traditional and modern interpretations of

vernacular coastal New England architecture for the purposes of promoting appropriate waterfront scale and character including building materials, massing, density, scale and roof lines.

- B. Large expanses of blank walls shall not be allowed. Facades shall have frequent architectural articulation. Major such articulations shall be spaced no farther apart than 25% of the building length at street level (but in no case farther apart than 70 feet). Street levels lined with extensive windows and frequent well-designed entrances to street level uses are encouraged, permitting continuous public views and access in and out of buildings in order to create a lively street atmosphere. Window designs in a vertical orientation are encouraged.
- C. Screening of ground floor parking from pedestrian view with appropriate doors, building elements and/or landscaping features is required for parking areas along public ways.
- D. All projects shall be designed to minimize the size and number of curb cuts. Full width curb cuts will not be allowed. In keeping with the theme of screening parking from the public view, efficient traffic patterns are encouraged to support ingress and egress from lots. Curb cuts may not exceed an aggregate of 24 feet for every 100 feet of frontage. Lots with less than 100 feet of frontage may have one curb cut, 14 feet in length.
- E. Underground utilities for new and redeveloped buildings are required unless physically restricted or blocked by existing underground obstructions.
- F. A straightforward use of natural, traditional or sustainable building materials is encouraged. Brick, stone, high quality metals, cast concrete, wood, and cement fiber board will achieve the greatest level of compatibility with the surrounding area and will best stand the test of time: in terms of both changing community tastes and withstanding the historically vibrant commercial climate of the Salisbury Oceanfront. Exterior material substitutions, in particular products and applications that are of higher quality than those described in these guidelines, are encouraged.
- G. Building facades shall include architecturally distinct styles promoting diverse design, particularly with roof top appurtenances such as cupolas, turrets, spires, widow walks, etc.
- H. A diversity of roof heights, gable orientations, and volumes in new buildings is required.
- I. Traditional arrangement of façade components into base, middle, and top composition may be used to achieve compatibility and continuity within the surrounding architectural context. Additionally, projecting bays, recessed balconies, and roof shape variation shall be utilized to provide interest, individuality, and appropriate scale to new development.
- J. Sidewalk amenities such as street furniture, lighting and awnings that encourage year-round pedestrian use and sidewalk café style seating to enhance the public realm are encouraged.
- K. Rear vehicular access to ground floor parking is preferred to minimize curb cuts on principal streets. Use of streets other than Broadway and Oceanfront South for vehicle access is preferred. Use of shared access points is encouraged to minimize

the number of curb cuts.

- L. Placing buildings oriented parallel with the front setback line is required to keep a consistent “street wall”, with primary entries oriented towards the street.
 - M. Building setbacks may be varied and are encouraged to recognize the siting and scale of adjacent development.
 - N. At the intersection of the building line with crossover streets, there may be variation to the building edges to allow for corner elements and circulation functions. The building edges may be articulated and organized in such a way to achieve an architecturally rich and contextually varied composition. Variation in the building edge beyond the minimum setback is encouraged.
 - O. The façade proportions used in new development shall incorporate compatible architectural details, storefront design, window openings, and roof shapes to balance the proportions of facades into pleasant and cohesive compositions.
 - P. Building elevations are required to incorporate architecturally appropriate techniques to articulate the massing of the proposed building, such as projecting bay windows, different material for the ground floor base, cornice lines, and/or material changes, etc.
 - Q. To the extent feasible, provisions shall be made to accommodate the construction and use of an elevated pedestrian walkway (boardwalk) along the oceanfront within the Salisbury Beach Overlay District Boundaries stipulated in Exhibit I and to accommodate the future extension of the walkway along the oceanfront to the North and South of the Overlay District.
 - R. To the maximum extent reasonably possible, the ground floor levels in the Broadway Revitalization Subdistrict and the Oceanfront South Revitalization Subdistrict shall be elevated to the minimum elevation stipulated by the State Building Code and such elevations shall permit continuous sidewalks and/or boardwalks to be constructed along the building frontages that will permit easy access for pedestrians to building entrances and easy access to and from the boardwalks, the street and the beach.
 - S. Ground floor non-commercial habitable spaces provided at the base of buildings in the Oceanfront South Revitalization Subdistrict shall be initially designed so as to be capable of conversion at a later date to commercial use. Design features necessary for such conversion include, but are not limited to: proper ceiling height, construction assemblies meeting building codes for mixed uses, and accommodation for provision of future handicapped access.
- 12. Severability:** In the event that one or more of the provisions of this by-law are found or determined to be illegal or unenforceable by the Massachusetts Attorney General, the Massachusetts Appeals Court or the Massachusetts Supreme Judicial Court, then the illegality or unenforceability of any such provision shall not affect the validity of any other provision of this by-law which provisions will remain in full force and effect.

SECTION XF

Inclusionary Housing Requirements (Adopted May 16, 2005)

XF1. Purpose

The purposes of this By-law are:

- a. to increase the supply of housing in the Town of Salisbury that is permanently available to and affordable by low and moderate income households;
- b. to encourage greater diversity of housing accommodations to meet the needs of Salisbury residents, including certain local employees; and
- c. to develop and maintain a satisfactory proportion of the Town's housing stock as affordable housing units.

XF2. Definitions

- a. Affordable Housing Trust Fund (the "Fund"): An account established and operated for the exclusive purpose of creating and preserving affordable housing in the Town of Salisbury. The Fund may be used for the following purposes, including but not limited to, to purchase and improve land for affordable housing, to purchase housing units or develop new and/or rehabilitated housing units for purchase or rental by Qualified Affordable Housing Purchasers or Tenants or to preserve existing affordable housing. Expenditures from the Fund shall be authorized by a majority vote of the Board of Trustees of the Fund.
- b. Affordable Housing Unit: a housing unit that by Deed Restriction is and will remain:
 1. available for sale and sold at a selling price that will result in an Annual Shelter Cost of not more than thirty percent (30%) of the annual income of a Qualified Affordable Housing Unit Purchaser; or
 2. available for rental and rented at an annual rent, including mandatory or unavoidable fees, that will result in an Annual Shelter Cost of not more than thirty percent (30%) of the annual income of a Qualified Affordable Housing Unit Tenant, or rented to a tenant receiving rental assistance pursuant to a state or federal rental assistance program; and, in either case;
 3. affordable to and occupied by a low or moderate income household, meet the definition of low or moderate income housing at 760 CMR 30.02, and eligible for inclusion in the Chapter 40B Subsidized Housing Inventory through the Local Initiative Program (LIP) under G.L. c. 40B sec. 20-23.
- c. Annual Shelter Cost:
 1. For owners, the aggregate of annual charges for debt service on a mortgage (assuming a 5% down payment), real estate taxes, homeowner's insurance, and condominium fees, if applicable.
 2. For tenants, the aggregate of annual charges for rent, utilities (except telephone and other telecommunications) and renter's insurance.
- d. Deed Restriction: A provision, acceptable in form and substance to the Town Counsel of the Town of Salisbury, in a deed of real property that runs with the land in perpetuity or for the longest period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property. The Deed Restriction shall limit the resale price of any ownership units, and shall bind all subsequent purchasers in perpetuity, consistent with Massachusetts Department of

Housing and Community Development's ("DHCD") regulations and guidelines under Chapter 40B of the Massachusetts General Laws. Subsequent resale prices shall be determined based on a percentage of the area median income at the time of resale as determined by the United States Department of Housing and Urban Development ("HUD") and adopted by DHCD. The resale price will be determined in accordance with the Deed Restriction and will be established based on the same percentage of the area median income that was used to set the price for which the unit was originally sold. Notwithstanding the foregoing sentence, the resale price of an Affordable Housing Unit shall not exceed that amount which will require a household earning 80% of the most recent area median income number, as published by HUD and adjusted for the household size that corresponds with the number of bedrooms in the Affordable Housing Unit, to spend a maximum of 30% of the household's annual income on Annual Shelter Cost. The method of resale price calculation shall be included as part of the Deed Restriction. The Town of Salisbury shall not be held responsible for any future fluctuations in market price or median income that may affect the resale price of any unit subject to a Deed Restriction. Any restriction created under this By-law shall survive any bankruptcy or insolvency or other actions and shall not be subject to nullification for any reason.

- e. Qualified Affordable Housing Unit Purchaser or Tenant: An individual or family with household income that does not exceed 80% of the local metropolitan statistical area median income, with adjustments for household size, as reported by the most recent information from the HUD and/or DHCD.
- f. Salisbury Resident: for purposes of this By-law only a Salisbury Resident is:
 - 1. an individual or family or a parent or child of an individual maintaining a primary residence in the Town of Salisbury;
 - 2. an individual who is employed at least 20 hours a week in the Town of Salisbury;
 - 3. an individual who is employed at least 20 hours a week by the Town of Salisbury or by the Triton Regional School District; or
 - 4. an individual who, for a continuous period of at least five years within the thirty years immediately preceding application for a Salisbury Affordable Housing Unit, maintained a primary residence within the Town of Salisbury

XF3. Applicability

The requirements of this section apply to

- a. any proposed multifamily residential development that would create three or more attached or detached housing units on a single parcel of land;
- b. any proposed subdivision of land for residential development that would permit construction of three or more attached or detached housing units, including land divisions under G.L. c. 40A, sec. 9 (Special Permits), as well as conventional subdivisions allowed by G.L. c. 41, sec. 8K-81GG (Subdivision Control Law).
- c. any cluster or flexible residential development under Section XC of this By-law that would permit construction of three or more attached or detached housing units; and
- d. any application to the Zoning Board of Appeals for a variance or a finding that would permit construction of three or more attached or detached housing units.

Developments may not be segmented or phased to avoid compliance with this By-law. In order to avoid discouraging redevelopment of existing housing units, in calculating inclusionary housing requirements and Housing Contribution Payments under this By-law, no affordable housing construction or payment is required with respect to any new housing unit that is merely replacing a pre-existing, legal housing unit as part of a residential

development or redevelopment project. Motel or hotel units shall not be considered as housing units under this By-law. If requested by the Planning Board or the Zoning Board of Appeals, the Building Inspector with advice from the Assessor shall determine in writing the number of pre-existing, legal housing units on a development site under this By-law.

XF4. Requirements

a. Multifamily Residential Developments

1. Ten percent (10%) of the housing units in any mixed-use multifamily residential development shall be Affordable Housing Units.
2. Twelve and one-half percent (12½%) of the housing units in any non-mixed-use multifamily residential development shall be Affordable Housing Units.

b. Cluster or Flexible Residential Developments

Ten percent (10%) of the housing units in any cluster or flexible residential development shall be Affordable Housing Units.

c. Subdivisions and Residential Developments requiring a Finding or Variance

Twelve and one-half percent (12½%) of the housing units in any subdivision or other residential development described in subsection XF.3.b. or d. shall be Affordable Housing Units.

XF5. General Provisions

a. Consultation with Housing Partnership Committee

Developers whose projects are subject to this By-law are encouraged to consult with the Salisbury Housing Partnership Committee early in the development process concerning the Town's affordable housing needs and the optimum manner in which the Town's needs and the developer's affordable housing requirements can be met by the proposed development consistently with any affordable housing planned production plan then in effect in the Town. The Housing Partnership Committee may consult with and give advice to the Planning Board and the Zoning Board of Appeals during the development process and, as a part of the process, may submit written reports to the board reviewing any proposed development subject to the By-law.

b. Comparability

Unless otherwise approved by (a) the Planning Board or (b) the Zoning Board of Appeals in the case of residential developments requiring a finding or variance, all on-site Affordable Housing Units shall be dispersed throughout the site and shall be indistinguishable from market-rate units except in interior finish, fixtures and appliances. For both on-site and off-site units that are a part of any development proposal, the number of bedrooms in Affordable Housing Units shall be comparable to the bedroom mix in market-rate units in the development.

c. Selection Process

The selection of Qualified Affordable Housing Unit Purchasers or Tenants shall be conducted as follows:

1. The selection process shall include a plan for marketing the Affordable Housing Units created under this By-law which describes how the Affordable Housing Units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers and/ or renters. The marketing plan must describe how the applicant will accommodate local preference

requirements of this By-law in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the Local Initiative Program. The duration and design of the plan shall reasonably inform all those seeking affordable housing, both within and outside the Town, of the availability of such units.

2. To the extent practicable, Salisbury Residents shall be given local preference for the maximum number of the Affordable Housing Units created in any development subject to this By-law that is permitted under DHCD guidelines (currently, seventy percent (70%)).
3. Developers may sell affordable for-sale units to the Town, the Salisbury Housing Authority, or to a private nonprofit entity serving Salisbury for the purpose of providing affordable housing opportunities and to permit such entity to market the Affordable Housing Units and manage the choice of buyers.

XF6. Off-Site Location

With the approval of (a) the Planning Board in the case of mixed-use multifamily and multifamily residential developments, cluster or flexible residential developments and other subdivision developments or (b) the Zoning Board of Appeals in the case of residential developments requiring a finding or variance, the inclusionary housing requirement may be met through the provision of some or all of the required Affordable Housing Units on an alternative site or sites suitable for housing use. Affordable off-site units shall either be newly created or located in an existing structure. If located in an existing structure, the units shall be lead-free and in marketable condition. In determining compliance with this By-law, affordable off-site units that are newly created and are not replacing existing, legal housing units shall be counted in the total number of housing units created by a proposed development. Unless otherwise approved, Affordable Housing Units provided under this subsection shall comply in all respects, other than on-site location, with the requirements of this By-law.

XF7. Affordable Housing Construction or Housing Contribution Payments in lieu of Fractional Affordable Housing Units

Where the application of a formula specified in Section XF4. above results in a fractional Affordable Housing Unit, the developer may elect (a) to build an Affordable Housing Unit on site, (b) to seek approval to build an Affordable Housing Unit off-site in accordance with Section XF6., or (c) to make a Housing Contribution Payment to the Affordable Housing Trust Fund for each market-rate housing unit in the development in accordance with Section XF8.

XF8. Housing Contribution Payments in lieu of On-Site Units

a. Approval

The inclusionary housing requirement may be met if the developer makes a binding, written agreement with the Town to Salisbury (with appropriate payment security arrangements) to make Housing Contribution Payments to the Affordable Housing Trust Fund in lieu of building Affordable Housing Units that is approved by (a) the Planning Board in the case of mixed-use multifamily and multifamily residential developments, cluster or flexible residential developments and other subdivision developments or (b) the Zoning Board of Appeals in the case of residential developments requiring a finding or variance.

b. Amount

For all developments subject to this by-law the Housing Contribution Payment for each market-rate housing unit in the development shall be equal to \$10,000 for all housing units

with a sales price of \$300,000 or less and shall be equal to 3.5% of the selling price of all market-rate housing units with a sales price higher than \$300,000, provided that the Housing Contribution Payment for any market-rate housing unit shall not exceed a maximum of \$21,000. The maximum per unit Housing Contribution Payment amount shall be adjusted annually by the Planning Board as set forth herein.

c. Adjustment

The Planning Board shall adjust the maximum Housing Contribution Payment annually, effective March 1st of each year. The annual adjustment shall be equal to the percentage change in the median sale price of single family homes in the Town of Salisbury during the previous calendar year, as reported by The Warren Group (or another independent reporting agency selected by the Planning Board if The Warren Group no longer reports such information), and rounded to the nearest tenth of a percent. For example, if the median sales price of single family homes was \$275,000 for the previous calendar year and was \$250,000 for the calendar year before that, the Planning Board would adjust the maximum Housing Contribution Payment by +10%. The adjusted maximum payment amount shall apply to all Housing Contribution Payments made on or after March 1st of any year until the last day of February of the next year.

XF9. Regulations

Affordable housing production, Housing Contribution Payments and rental and resale restrictions required by this section shall be governed by regulations recommended by the Salisbury Housing Partnership Committee and approved by the Board of Selectmen for purposes of carrying out this By-law and shall not be inconsistent with the Massachusetts Department of Housing and Community Development's ("DHCD") regulations and guidelines under Chapter 40B of the Massachusetts General Laws.

XF10. Compliance

a. Building Permit Conditions

All contractual agreements with the Town of Salisbury and other documents necessary to ensure compliance with this Section XF shall be executed and delivered to the Town Office of Planning and Economic Development and to the Town board reviewing any project or development prior to and as a condition of the issuance of any approval required to commence construction. The Building Inspector shall not issue a building permit with respect to any project or development subject to this Section XF unless and until the Town Office of Planning and Economic Development has certified in writing to the Building Inspector that all conditions of this Section XF, including any conditions that may be established by the Planning Board or Zoning Board of Appeals in any decision or approval, have been met.

b. Occupancy Conditions

1. Compliance

No certificate of occupancy shall be issued for any market-rate units in a development subject to this Section XF until all Deed Restrictions, agreements with the Town of Salisbury and/or other documents necessary to ensure compliance by the applicant (and any purchasers of the Affordable Housing Units) with the requirements of this By-law have been executed and recorded.

2. Housing Contribution Payments

Required Housing Contribution Payments shall be made with respect to each market-rate housing unit prior to issuance of an occupancy permit for the unit;

provided that such payments may be made at the time of conveyance of each unit to an end user or upon occupancy by any tenant if appropriate security arrangements to guarantee such payment have been made and are in effect under an agreement with the Town under Section XF8. above.

3. Timing of Construction

Where feasible, Affordable Housing Units shall be provided coincident with the development of market-rate units, but in no event shall the development of affordable on-site or off-site housing units be delayed beyond the following schedule:

<u>Market-Rate Unit %</u>	<u>Affordable Housing Unit %</u>
up to 30%	none required
30% to 50%	at least 10%
over 50% to 75%	at least 40%
over 75% to 90%	at least 70%
over 90%	100%

Fractions of units shall not be counted.

XF11. Severability

In the event that one or more of the provisions of this by-law are found or determined to be illegal or unenforceable by the Massachusetts Attorney General, the Massachusetts Appeals Court or the Massachusetts Supreme Judicial Court, then the illegality or unenforceability of any such provision shall not affect the validity of any other provision of this by-law which provisions will remain in full force and effect.

SECTION XI

PLANNING BOARD

The Planning Board consisting of five (5) regular members and one associate member shall be appointed as provided in Section 3-2 of the Town of Salisbury's Charter. The associate members term shall run for a period of two years. The chairman of the Planning Board may designate the associate member to sit for the purposes of acting on any application before the Board in the case of absence, inability to act, conflict of interest on the part of any regular member of the Board, and/or in the event of a vacancy.

Section XI.E

PLANNED OFFICE DEVELOPMENT – SPECIAL PERMIT

1. **Purpose:** To provide land for: Office, Research and Development, and product assembly purposes in the Office Park District (C3). In addition, POD developments encourage reduced traffic impacts through shared access and parking facilities, regulate land use compatibility, and discourage conventional strip developments along our community streets. Moreover, POD should provide a land use pattern to accommodate a variety of uses, and to allow for the preservation of open space, the protection of natural and architectural features and other environmentally sensitive areas.
2. **Applicability:** The Planning Board may grant a Special Permit for a Planned Office Development (POD) in the Office Park District (C3) only. The granting of a Special Permit for a Planned Office Development shall also constitute approval and compliance with all Site Plan Review requirements.
3. **Procedural Requirements:** The following requirements shall be in addition to the general requirements for a Special Permit specified in Section IX of this Bylaw.
 - a. **Pre-Application Conference:** To promote better communication and to avoid misunderstanding, applicants are encouraged to submit preliminary materials for review by the Board prior to formal application. Preliminary subdivision plans, if any, should be submitted to the Planning Board prior to the application for a Special Permit. Such preliminary subdivision plans shall be submitted and comply with the Rules and Regulations governing the Subdivision of Land in the Town of Salisbury.
 - b. **Application:** Applicants for a Special Permit for a POD shall submit to the Planning Board ten (10) copies of the following: an application and the development plan in accordance with Section 3c. If the plan involves more than one (1) ownership, each owner of land included in the plan shall be a party to the application, and upon approval, subject to its provisions.
 - c. **Development Plan:**
 1. It shall be drawn at a scale of one (1) inch equals forty (40) feet, unless another scale is previously requested and found suitable by the Board.
 2. The scale, date and north arrow shall be shown.
 3. Lot number, dimensions of lot in feet, size of lot in square feet; and width of abutting streets and ways shall be shown.
 4. Easements within the lot and abutting, thereon,
 5. A professional engineer, registered architect or registered landscape architect shall prepare the Site Plan.
 6. The plan shall be stamped by the registered land surveyor who performed the boundary survey and who shall certify the accuracy of the location of the buildings, setbacks, and all other required dimensions, elevations, and measurements and shall be signed under the penalties of perjury.
 7. A utilities and drainage plan shall be prepared by a professional engineer.
 8. The location of existing or proposed buildings on the lot shall be prepared by a registered architect to include the total square footage and dimensions of all buildings, all building elevations and floor plans, and perspective renderings. Further, the depiction of materials and colors to be used shall be required.
 9. The total number of commercial units.
 10. The location of existing wetlands, water bodies, wells, one hundred-year floodplain elevation and other natural features requested by the Planning Board during the preliminary plan review phase.
 11. The distance of existing and proposed buildings from the lot lines and the

- distance between buildings on the same lot.
 12. Percent of building lot coverage.
 13. Average height of each building (see definition).
 14. The elevation above average finished grade of the floor and ceiling of the lowest floor of each building.
 15. Existing and proposed topographical lines at two-foot intervals.
 16. The use designation of each building or part thereof, and of each section of open ground, plaza or usable roof space.
 17. Numbering of parking spaces.
 18. Height of all buildings above average finished grade of abutting streets.
 19. A landscape plan to include the total square feet of all landscape and recreation areas, and depiction of all materials to be used, and the quantity, size, and species of plantings.
 20. Deed or other recorded instrument that shows the applicant to be the owner under the option of the land to be designated as a POD and that the land is in single or consolidated ownership at the time of final plan applications.
 21. The applicant shall submit such materials as may be required regarding: measures proposed to prevent pollution of surface water or ground water, soil erosion, increased runoff and flooding; design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectionable features from neighbors; projected traffic flow patterns into and upon the site for both vehicles and pedestrians and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.
- d. **Other Material:** In addition to the materials required above and by Section IX of this Bylaw, the application materials shall also indicate each landowner's interest in the land to be developed and the substance of, if any, covenants and grants of easements to be imposed upon the use of land and structures and a development schedule.
- e. **Review of Other Boards and Agencies:** Upon receipt of the application and related plans/analyses, the Board shall within ten (10) days transmit one (1) copy each to the Planning Director, Department of Public Works Director, Building Inspector, Board of Health, Conservation Commission, and Fire Department. These boards and agencies shall review said plans and provide recommendations to the Board within 30 days.
- f. **Board Considerations:** In addition to the general permit findings required in Section IX, the Planning Board shall also make the following determinations: 1) that the plan complies with the requirements of Section XXI Site Plan Review; 2) that the plan provides the opportunity for a variety of office and/or commercial uses and enhances the overall size and character of the development; 3) that the plan is superior to a conventional plan in preserving and protecting the natural and cultural features of the site; 4) that the plan allows more efficient provision and/or use of streets, utilities, and other public services, and does not constitute a health or safety hazard; 5) that consideration has been given to the Salisbury Site Plan Approval process and requirements and the Salisbury Master Plan.
4. **Requirements:** A Planned Office Development Special Permit shall conform to the following:
- a. **Minimum Tract Size:** For each application for a Special Permit the tract in single or consolidated ownership at the time of application shall be at least ten (10) acres and shall be subject to approval by the Planning Board under the Subdivision Control Law. Minimum tract size may include up to one acre of land defined as wetlands under the Massachusetts Wetland Protection Act.
 - b. **Allowable Uses:** For a POD in the Office Park District (C3), all permitted uses and uses allowed by a Planning Board Special Permit, in the Office Park District as

indicated in Section V Table of Use Regulations, are permitted. Note, all approved POD's shall be served by a public water & Sewer system.

5. **Dimensional Regulations:**

- a. Unless increased by the Planning Board to fifty (50) feet, all buildings shall be limited to thirty five (35) feet in height.
- b. Minimum width of open land between any lot and adjacent property not part of the Planned Office Development (POD) shall be 50 feet, and between each building, in the POD a minimum of 40 feet. Up to one acre of Property in the Commercial District (C), which is part of a parcel proposed for a POD, may be used to calculate the minimum tract size required for a POD. Further, a building setback of at least 25 feet shall be required from the front lot line
- c. Each building lot shall contain a site that, subject to the approval of the Director of Public Works, shall be suitable for connection to the Town sewer system.
- d. Each lot shall be of a size and shape that shall provide a building site, which is in harmony with the natural features of the site and provides adequate access to public safety vehicles. The size and shape of each lot and location of the building site and parking, areas shall be subject to the approval of the Planning Board.
- e. Unless reduced by the Planning Board to minimum of 30%, at least 40% of the total tract area shall be set aside and maintained as permanent open space. Under no circumstances shall the open space be built upon, or used for parking or auxiliary business purposes.
- f. Unless increased by the Planning Board to 50% the maximum building coverage shall be 40%.
- g. The required frontage is one hundred and fifty (150) feet.
- h. Any proposed construction of structures or parking lots shall be fifty feet from any wetland boundary and only limited cutting or alteration of land shall occur within twenty five feet.

6. **Additional Special Permit Requirements:** Prior to the Board increasing any heights or reducing the required open space or building coverage the Board must find that the plan meets the following design standards prior to a special permit being issued. The Board shall find that:

- a. The plan sufficiently incorporates the use of shared driveways and automotive connections between developments
- b. Pedestrian access is provided to the site along its access road and that the provision for pedestrian connections to abutting properties and required open space areas are also incorporated into the plan.
- c. Proposed drainage improvements are consistent with any State or Local stormwater control guidelines or regulations.
- d. Any structured parking facilities shall be consistent with the design of the buildings

7. **Improvements:** All streets, drainage, water systems, sewerage, utilities, grading, and other improvements shall be made in accordance with the Rules and Regulations governing the Subdivision of Land in the Town of Salisbury. In accordance with the Subdivision Control Law and the Rules and Regulations governing the Subdivision of Land in the Town of Salisbury, the Planning Board shall require a performance guarantee for the proper installation of all improvements.

8. **Parking Requirements:** All parking requirements shall be met off-street and in accordance with the criteria established in this Bylaw.

SECTION XII

ADULT ENTERTAINMENT ZONING BY-LAW

- 1. Purpose:** It is the intent and purpose of this By-Law to regulate Adult Entertainment Establishments to promote the health, safety, and general welfare of the citizens of Salisbury.

It is also the purpose and intent of this By-Law to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses referenced and defined herein. Such secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town, all of which secondary impacts are adverse to the health, safety, and general welfare of the Town of Salisbury and its inhabitants.

The provisions of this By-Law have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this By-Law to restrict or deny access by adults to adult entertainment establishments and to sexually oriented matter or materials protected by the Constitutions of the United States of America and of the Commonwealth of Massachusetts, nor restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute, or exhibit such matter or materials. Neither is it the purpose or intent of this By-Law to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

- 2. Establishment of District:** Adult entertainment establishments are prohibited in any zoning district within the Town of Salisbury except for the Industrial District, Commercial 2 District, and the Beach Commercial District.

3. Definitions Adult Entertainment Establishments shall include the following:

- A. Adult Video & Bookstore: An establishment having more than fifteen percent (15%) of its stock in trade, printed matter, books, magazines, picture periodicals, motion picture films, video cassettes and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272, Section 31.
- B. Adult Motion Picture Theater: An enclosed building or drive-in theater used for presenting motion pictures, slides, photo displays, videos, or other material for viewing distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in Section 31 of MGL Chapter 272.
- C. Adult Paraphernalia Store: An Establishment having more than fifteen percent (15%) of its business inventory or stock in trade as devices, objects, tools, or toys for sale, rental or display at any point in time; which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in section 31 of MGL Chapter 272.
- D. Live Adult Entertainment: Establishments which feature persons, entertainers, or employees, who appear or work in a state of nudity, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or

sexual excitement as defined in Section 31 of MGL Chapter 272.

1. Special Permit Required

No Adult Entertainment Establishment shall commence operations without first applying for and receiving a Special Permit from the Board of Appeals.

5. Special Permit Conditions

All of the Special Permit conditions of this By-Law and the special permit conditions of the Salisbury Zoning By-Law Section IX F must be met in order for an applicant to be granted a Special Permit for an adult entertainment establishment.

- A. All Adult Entertainment Establishments proposed to be located in the Industrial District, the Commercial 2 District, or the Beach Commercial District must meet the following distance requirements from:

Residential Zone	400'
State Certified public or private school	1000'
State Licensed day care centers	1000'
Religious Institutions	1000'
Other Adult Entertainment Establishments	1000'
Land or Buildings used for municipal governmental purposes	500'
Municipal or State park, reservation, or recreation area	1000'
Public Beach	200'

Adult Entertainment Establishments proposed in the Industrial District and the Commercial 2 District must also meet the following distance requirement from:

The property lines of a parcel of land, 2 acres or less, On which a residence is located:	400'
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Residential structure located on a property which is greater than 2 acres:	600'
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- B. Adult Entertainment Establishments shall be located in stand alone facilities and shall not be allowed within a building containing other retail, consumer, residential uses, etc...
- C. Only one Adult Entertainment Establishment may be located within a building.
- D. A material condition to any Adult Entertainment Establishment shall be that such establishment must cease its operations between the hours of 1:00 am and 10:00 am each day.
- E. Each applicant for an Adult Entertainment Establishment must provide a plan, submitted with its application, showing the required parking on the same lot as said establishment.
- F. The Applicant must present a plan to the Planning Board to be reviewed under Site Plan Review. Planning Board approval of the site plan must be obtained before a Special Permit may be granted.
- G. All signs for any Adult Use must meet the requirements of the Salisbury Sign By-Law. In addition, no advertisement, display or other promotional material which contains sexually explicit graphics or sexually explicit text shall be visible to the public from any public way including but not limited to sidewalks, pedestrian walkways, highways, or railways, or from abutting private property. All proposed permanent signage for the Adult Entertainment

establishments shall be presented for review.

- H. No applicant may be issued a Special Permit if they, or any members of the Board of Directors or investors of a Corporation, Partnership etc..., have been convicted of violating the provisions of Section 63 of MGL Chapter 119, or Section 28 of MGL Chapter 272.
- I. A Special Permit for an Adult Entertainment Use shall lapse within one (1) year if substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause; excepting only any time required to pursue or await the determination of an appeal from the grant thereof.

A Special Permit for an Adult Use shall lapse within one (1) year from the time in which it is discontinued, abandoned, or not used.

6. Non Conforming Uses

Non-conforming adult uses in existence prior to the adoption of this Bylaw shall continue to operate provided there is not a discontinuance of use for more than ninety days.

7. Severability

In the event any one or more provisions of this Bylaw are found or determined to be illegal or unenforceable by the Massachusetts Appeals Court or the Massachusetts Supreme Judicial Court, then the illegality of any such provision shall not affect the validity of any other provision of this Bylaw which provisions will remain in full force and effect.

ARTICLE XX

EARTH REMOVAL BY-LAW

A. General Provisions:

1. The removal of soil, loam, sand and / or gravel from land not in public use within the Town of Salisbury, except as hereinafter provided, is prohibited.
2. The failure to construct an adequate fence or barrier around an area where earth materials have been or are in the process of being removed within 30 days of the receipt of a written order to do so by the Selectmen of the Town shall constitute a separate violation of this By-Law for each day in excess of 30 days that such fence or other barrier has not been constructed.
3. The failure to have completed finished grades in permitted excavation area of at least 2 units horizontal for every 1 unit of elevation, within 3 months after permitted earth removal has been completed shall constitute a violation of this By-Law for each week in excess of 3 months that such grading remains incomplete.

B. Permitted Earth Removal Operations: Any person or firm may be issued a permit by the Board of Selectmen for removal of earth materials from land not in public use upon the following terms and conditions.

1. An applicant for such permit shall present a plan of the premises where such removal is contemplated showing with specificity the area where earth removal operations will occur, the present elevations or topography, the proposed finished elevations or topography, and the annualized water table elevation for such premises.
2. The applicant shall present a written outline proposal indicating the type fence or barrier that he intends to construct around the earth removal site, and the time period in which he intends to remove the earth materials.
3. The Board of Selectmen, upon such application, may issue a permit for such earth removal in accordance with such plan and written statement or outline, and such other restrictions or conditions as it may require to ensure protection from, damage to the public or natural water supply, damage to adjoining lands, roads, or structure hazards to children and strangers, detriment to a neighborhood, and inconvenience to the public. If the Board finds that no restrictions or conditions will adequately protect against the above hazards it may refuse to issue such permit.
4. The Board of Selectmen may require the applicant to post a bond with or without sureties for completion of the work permitted on the premises.
5. Any such permit shall expire and be of no further force or effect on December 31 in the year it was issued.

C. Continuing Earth Removal Operations:

1. Any earth removal operation over from one year to the next must issued a permit for each calendar year it is in operation prior to any earth removal operations in that calendar year.
2. The permit procedure for each calendar year shall require submission of plan showing with specificity the area where earth materials are to be removed in that year including before and after elevations and slopes a the annualized water table elevation for that area. A written statement shall also be required setting forth the types of barriers or fences constructed around any new site and the time in which that years work be completed on the new site no later than 45 days prior to permit expiration date, the applicant shall submit a fully certified Registered Engineer Map showing the items recited in C-2.
3. The Board of Selectmen may refuse to issue a permit for such continued operation if it finds that the requirements of a previous years plan with respect to the subject premises or person or firm have not been met or completed, or if it finds such continued operations would endanger the natural water supply, adjacent lands, roads, or structures, or the safety of children or strangers.
4. The Board may issue a permit for such continued operation subject to such restrictions or conditions as it sees fit to ensure the provisions of section C-3 are satisfied, and such permit shall expire on December 31, in the year it issued.
5. The Board shall require the applicant to post a bond with or without surety for the completion of work permitted on the premises. \$5,000.00 per acre shown on the Engineer Map provided to the Town under provision C-2 above.

D. Preexisting Earth Removal Operations:

1. An Applicant for a permit who has operated on earth removal site continuously for the two years prior to January 1, 1985 shall not be refused a permit for such site on the grounds that such earth removal constitutes a detriment to the neighborhood or an inconvenience to the public, however, such person or firm must in each and every other respect comply with the provisions of this By-Law in any earth removal operations.

E. Cessation of Operations, Suspension, Revocation:

1. The Board of Selectmen, upon investigation of an earth removal site, may issue a hearing notice and order, with respect to any earth removal operation which it has reason to believe is in violation of the permit issued for such removal, or is otherwise in violation of this By-Law. Such notice shall require the owner and operator of the earth removal site to cease any and all earth removal until appearing at a hearing before the Board to be held no later than 10 days from the date when such notice is served, at which time the Board will hear evidence as to any alleged violation that any party or their attorney may care to present.
2. If, after such hearing, the Board determines that a violation of the terms and conditions of a permit or this By-Law has occurred, it may revoke, suspend, or modify such permit as it sees fit to ensure continued compliance with this By-law throughout the Town.

F. Special Provisions:

1. No earth removal shall be permitted within 200 feet of a way below the elevation of the way.

2. No standing water in excess of 1 foot in depth shall be permitted upon an earth removal site without an adequate fence completely surrounding such water and two warning signs posted conspicuously on such fence.
3. No excavation on an earth removal site shall be permitted below the annualized water table elevation without specific express authority therefore evidenced on the face of a permit.
4. The Board of Selectmen shall have the authority to waive any of the permit procedure requirements, and barrier and grade requirements upon a finding that such waiver is not inconsistent with the intent and purpose of this By-Law.

G. Penalties: Except as otherwise provided in Section A-2 and A-3, a violation of this By-Law is deemed to exist for each day that a violation continues to occur or exist upon any land not in public use.

A violation within a calendar year is punishable by a fine of \$50.00.

A second violation within a calendar year is punishable by a fine of \$100.00.

Each subsequent violation within a calendar year is punishable by a fine \$200.00.

H. Severability: In the event any one or more provisions of this By-law are found or determined to be illegal or unenforceable by the Massachusetts Appeals Court or the Massachusetts Supreme Judicial Court, then the illegality of any such provision shall not affect the validity of any other provisions of this By-Law which provisions will remain in full force and effect.

I. Other Laws: Wherever possible this By-law is to be construed consistently with the General Laws and other By-Laws of the Town. In the event the provisions of this By-law conflict with the provisions of another Town By-law, then this By-law shall be controlling with respect to the issue in conflict.

This By-law shall not apply to the removal of earth materials in connection with the construction of a building for which a building permit has been issued or to the removal of earth materials in accordance with a subdivision plan approved or endorsed by the Salisbury Planning Board.

ARTICLE XX-A

REGULATES EARTH REMOVAL

Clause 17 of Section 21, Chapter 40, regulates the removal of sand, loam or gravel from land not in public use in the Town of Salisbury.

- 1.** No person who is an inhabitant of the town or non inhabitant of the town, or company or corporation shall remove sand, loam, gravel from land not in public use in of the confines of the Town of Salisbury, Massachusetts.
- 2.** Penalty for violation of By-law. First offense \$50.00; Second offense \$100.00; For each subsequent offense \$200.00.

SECTION XXI
SITE PLAN REVIEW
(ADOPTED MAY 16, 2005)

XXI.1 Intent

These regulations recognize that certain developments of land, though generally suitable for location in a particular zoning district are, because of their nature, size, complexity or other reasons of probable impact, capable of affecting the stated purposes of this by-law, unless careful consideration is given to certain critical design elements. It is the intent of these regulations to provide a mechanism for the review of an applicant's attention to such critical design elements within developments that are subject to review.

XXI.2 Purpose

The purpose of this by-law is to protect the public health, safety, and welfare; to promote balanced growth; to protect property values and to encourage developments that are in harmony visually and aesthetically with the existing neighborhood characteristics of the Town of Salisbury.

XXI.3 Applicability

- A.** The Planning Board shall be the reviewing authority for all projects subject to Site Plan Review.
- B.** Major and minor projects: Site plan review shall be required: (1) for any permit for exterior construction, remodeling, newly paved areas, change of use or renovation to a structure intended for residential use which includes three or more residential units on one property, and/or (2) for any permits for exterior construction, remodeling, newly paved areas, change of use, or renovation to nonresidential uses or structure(s) including, but not limited to, commercial, industrial/infrastructure, marine, business or institutional/medical use(s).

The following criteria shall be used to determine whether the proposed project is reviewed as a major or minor project.

- 1. **Major projects:** Any project that consists of changing the outside appearance of a building and/or includes one or more of the following is considered a major project subject to site plan approval from the Planning Board.
 - a. Construction of 2,500 or more square feet of gross floor area;
 - b. Construction of a structure that occupies more than 33% of the lot on which it is situated
 - c. Renovation of an existing structure that exceeds 25% of the existing gross floor area;
 - d. Construction of a drive-through facility;
 - e. Construction of ten (10) or more new or additional parking or loading spaces;
 - f. Any new non-residential use or construction of a new non-residential structure that abuts a residential use.

2. **Minor projects:** Any project not included within the definition of a major project is considered a minor project subject to site plan review by the Planning Board. Including but not limited to:
 - a. Construction of less than 2,500 square feet of gross floor area
 - b. Construction of a structure that occupies less than 33% of the lot on which it is situated.
 - c. Change of use within an existing non residential building.
 - d. Newly paved areas
 - e. Exterior remodeling with structural alterations
 - f. Landscape improvements within 40 feet of a roadway on commercial property
 - g. More than 500 square feet of soil disturbance not accompanied by other construction

XXI.4 Exemptions

The following developments are exempt from Site Plan Review:

- A.** Single and two family dwellings.
- B.** Accessory Apartments.
- C.** Routine repairs and maintenance to existing structures (including reshingling, replacement windows, siding, painting).
- D.** 100 square feet or less of building construction or addition.
- E.** Exterior non-structural alterations.
- F.** Interior renovations.

XXI.5 Decision, Procedures, and Process

A. Review Procedure

1. Any person requiring approval of a site plan shall first obtain an Application for Site Plan Approval. Prior to filing a Site Plan Application, the applicant is encouraged to review the proposed site plan with the Planning Department. The purpose of this pre-filing review is to review with the applicant the requirements and criteria for Major and Minor site plan review and address questions in order to give the applicant advice and comments prior to submitting a Site Plan Application and thus avoid unnecessary time and costs to the applicant due to unforeseen problems and issues with a submitted site plan.
2. Prior to filing, the applicant must submit one (1) copy of a completed Site Plan Application and one (1) copy of the Site Plan, conforming to all requirements listed in the by-law, to the Planning Board, in care of the Planning Department.
3. The Site Plan Application and plan will be date stamped by the Planning Department and reviewed for completeness. Within 14 days, the Planning Department will notify the applicant if the application conforms to all requirements listed in the by-law, or needs additional information. Applications which include waiver requests made for specific by-law requirements may be deemed complete for those specific by-law

requirements. If the application is deemed incomplete by the Planning Department, the applicant may either 1) withdraw the application without prejudice or 2) submit one copy of a revised application. If the application is deemed complete by the Planning Department, the applicant may then file with the Planning Board, in care of the Planning Department, the completed application and the required copies of the application and plan along with the appropriate filing fee according to the Planning Board Rules and Regulations and a project fee according to the Planning Board Rules and Regulations. The application will then be stamped in by the town clerk.

4. The filing fee will be considered non-refundable when the application is stamped in by the town clerk. Every effort shall be made to have all Town comments submitted to the Planning Board within fourteen (14) days of receipt of a complete Site Plan Approval application and these comments shall be available to the applicant and to the public.

5. Major and Minor Procedural Differences:

- a. **Major Projects:** A public hearing, which has been noticed according to M.G.L Chapter 40A, Section 11, will be held within thirty (30) days of the date the complete application was stamped in by the town clerk. The Planning Department shall send written notice by first class mail to all abutters. Legal advertisement and postage shall be paid by applicant. Final action on the major project site plan shall be taken by the Planning Board within sixty (60) days of the **date the public hearing was opened**
- b. **Minor Projects:** The Planning Board will review the Minor Project Site Plan Review application under General Business at a regularly scheduled Planning Board meeting within 30 days of the date the complete application was stamped in by the town clerk. Final action on the site plan shall be taken by the Planning Board within 60 days of the **date the application was stamped in by the Town Clerk.**

B. Public Hearing: The public hearing for Major Projects, which has been noticed according to M.G.L Chapter 40A, Section 11, will be held within thirty (30) days of the date the complete application was stamped in by the Town Clerk. The Planning Department shall send written notice by first class mail to all abutters. Legal advertisement and postage shall be paid by applicant.

C. Final Action: Final action on the site plan application shall be taken by the Planning Board within sixty (60) days of the date the public hearing was opened for Major Projects, and within sixty (60) days from the date the application was stamped in by the Town Clerk for Minor Projects. Failure of the Planning Board to act within the above prescribed sixty (60) days for Major and Minor Projects shall be deemed as approval and it shall forthwith make such endorsement on said plan and, on its failure to do so, the Town Clerk shall issue a certificate to the same effect.

D. Waivers: When reviewing minor or major projects, the Planning Board may grant waivers in regards to submittal requirements listed in the Planning Board's Rules and Regulations. Such waivers may be granted for requirements that the Planning Board judges to be unnecessary for the review of small-scale developments or minor additions to or expansions of existing facilities, provided that the planned construction will not have a significant impact on pedestrian and vehicular traffic patterns, public services and infrastructure, environmental and historic resources, both within the site and in relation to adjacent properties and streets. Said waiver requests shall be accompanied by a statement setting

forth the reasons why, in the applicant's opinion, the granting of such a waiver would be in the public interest or the specific information required is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of the bylaw and these regulations. The applicant should make an effort to include all waiver request(s) with the initial filing of the application so that the Planning Department may render a decision on the application's completeness. The Planning Board shall issue waiver request approvals, and likewise, waiver request denials, in writing. The waiver request decisions may be incorporated in any final site plan approval or disapproval decision. The applicant should be prepared, in the case of a waiver denial, to supply the Planning Board with the missing requirements in a timely manner.

E. Approval: The Planning Board may approve the application after finding that the proposed project is in compliance with the purpose and intent of Site Plan Review as noted in Section XXI.1. & 2, and the Site Plan Submission Requirements and the Site Plan Performance and Design Standards as set forth in the Planning Board's Rules and Regulations in their entirety, notwithstanding any waiver granted, and other applicable town bylaws, regulations and guidelines. One (1) copy of the approved site plan and approval letter, signed by the Planning Board, shall be forwarded to the Building Inspector, applicant, and Town Clerk within five (5) days of final Planning Board action.

F. Denial: The Board may deny a site plan review application that fails to furnish adequate information required by the Site Plan Submission Requirements as set forth in the Planning Board's Rules and Regulations. Further, the Board may deny a site plan where, although proper in form, the project fails to meet the Site Plan Performance and Design Standards as outlined in the Planning Board's Rules and Regulations and other applicable town by-laws, regulations, and guidelines, or depicts a use or structure so contrary to the health, safety, and welfare of the public in one regulated aspect or another, that rejection by the board would be tenable. The disapproval letter shall specifically state the reasons for denial.

G. Conditions: In granting approval of an application the Board may impose conditions, limitations and safeguards that shall be in writing and shall be a part of such approval. Such conditions may include, but are not limited to:

1. Controls on the location and type of access to the site;
2. Requirements for off-site improvements to improve the capacity and safety of roads, intersections, pedestrian ways, water, sewer, drainage, and other public facilities which are likely to be affected by the proposed development;
3. Donation and/or dedication of land for right-of-way to provide for related roadway and/or intersection widening or improvements;
4. Conditions to minimize off-site impacts on traffic and environmental quality during construction;
5. Requirements for screening parking facilities from adjoining premises or from the street by walls, fences, plantings, or other devices to mitigate adverse impacts;
6. Conditions to mitigate adverse impacts to the neighborhood and abutters, including but not limited to adverse impacts caused by noise, dust, fumes, odors, lighting, headlight glare, hours of operation, water runoff or snow storage.
7. Requirements consistent with achieving the intent of the Master Plan and/or Community Development Plan for the Town of Salisbury.

The applicant, when other than the owner(s), and the owner(s) of land shall be responsible for any mitigation measures or conditions required as part of a favorable decision for issuance of site plan approval. The Planning Board shall send its decision, including all conditions and/or modifications, in writing to the building inspector, applicant, and town clerk.

H. Certificate of Completion: A Certificate of Completion application, in a form approved by the Planning Board, shall be submitted by the applicant or owner to the Planning Board upon completion of all required improvements. The Board's designated inspector shall complete a final inspection of the site within twenty (20) calendar days of the filing of the Certificate of Completion Application by the applicant. As a result of the approved inspections, the inspector shall submit to the Board a Certificate of Completion signed by the Board's designated inspector indicating that all work has been completed to the satisfaction of the Town of Salisbury. If the Board's inspector signs the Certificate of Completion, the applicant may proceed to request a Final Certificate of Occupancy. A Certificate of Completion signed by the Board's inspector officially terminates the Board's involvement in the site plan review process.

I. Occupancy Permits: No occupancy permits shall be issued for any building or structure, or portion(s) thereof, until a Certificate of Completion indicating that all work has been completed to the satisfaction of the Town of Salisbury is signed by the Board's designated inspector. However, occupancy permits may be issued for a portion of any building or structure if the only incomplete work shown on the site plan is landscaping or minor site work provided that surety is posted with the Town Clerk in an amount to be set by the Planning Board at a regular meeting. The Planning Board shall establish a deadline for completion of one year from the posting of the surety. The Planning Board may allow surety to be posted for site work in addition to landscaping if an unusual or unexpected event prevents the applicant from completing the site work. This allowance is subject to the review by the Planning Board by a site inspection to insure the safety and health for those who occupy the structure and use the site. This allowance may not be used for incomplete stormwater management areas or for wetlands replication that may be required by the Conservation Commission.

XXI.6 Time Frames

- A. Five-Year Limitation:** Active development or at least substantial progress toward implementation of the approved Site Plan must occur within five years or the approval becomes void. In the event that an applicant is unable to meet the requirements of this Section within the requisite period, the applicant may request an extension for completion or substantial development.
- B. B. Extensions:** The Planning Board may extend approvals for additional 1-year periods if there is just cause to approve an extension. A Request for Extension, in a form approved by the Planning Board, accompanied by a schedule of completion shall be completed by the applicant and filed with the Board in advance of their scheduling a Hearing on the extension request.

XXI.7 On-Site Construction Changes

An applicant may make limited on-site changes to an approved site plan. Said changes shall be based on unforeseen conditions, situations, or emergencies. Prior to undertaking the on-site alterations the applicant shall submit to the Board a letter detailing the proposed changes. The Board may review the letter under General Business and may either approve the on-site changes or request a Minor Project site plan review per Section XXI.3.B.

XXI.8 Fees and Costs

Application and filing fees shall be filed with the Planning Department at time of submission of the complete application. The filing fee will be considered non-refundable when the application is stamped as received by the Town Clerk. The Board may require special investigative studies, such as environmental assessments, traffic impact analysis or other studies necessary to make an informed decision. Expert services may be required by the Planning Board to review plans or documents. Please refer to the Planning Board's Rules and Regulations for a Project Review cost estimate. The applicant shall be advised of the costs prior to the studies being performed. The fees shall be paid prior to the studies being performed and will be held in escrow. Any unused balance will be returned to the applicant.

XXI.9 Performance Guaranty or Bond

The Board will require that the applicant file with the Board a bond, or other such surety acceptable to the Selectmen to cover costs of any construction on streets, utilities and other site improvements which, if left incomplete, could present a public hazard or nuisance. A performance agreement between the applicant and the Town will specify the manner in which the on or off-site improvements will be completed and the specific manner in which the surety will be released.

XXI.10 Compliance; Relation to other By-laws

The Site Plan Review By-Law in no way relieves any applicant from compliance with the Salisbury Zoning By-laws or any other By-laws of the Town of Salisbury, or any other State or Federal Laws or Regulations.

The provisions of this section shall not supersede or replace any other provision of the Town of Salisbury Zoning By-laws or other By-laws of the Town or any State or Federal laws or regulations. In case of a conflict between any provision of this section and any provision of any other section of the Zoning By-law, the provisions of such other section shall govern.

XXI.11 Adoption of Rules and Regulations

The Planning Board may, after notice and hearing, and by a 4/5 vote of the Planning Board, adopt rules and regulations to implement the provisions of this By-law, including but not limited to specifying the content and number of required plans, application procedures, design and development standards, and other general requirements consistent with this By-law. The Planning Board's rules and regulations may not make any changes in dimensional controls, permitted or prohibited uses, or density limitations that are specified in any provision of the Zoning By-law.

XXI.12 Severability

The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason; the remaining provisions shall remain in full force and effect.

Section XXIII
Wireless Communications Facilities

1. Purpose

The purpose of this subsection is to (1) minimize the adverse impacts of wireless communication facilities (hereinafter “WCF”) on adjacent properties and residential neighborhoods; (2) minimize the overall number and height of such facilities to only what is essential; (3) promote shared use of existing facilities to reduce the need for new ones; (4) encourage the most appropriate use of the land and to guide sound development while promoting the health, safety and general welfare of the Town; and (5) establish districts in which WCF’s may be located.

2. Wireless Communications Districts

Wireless Communication Facilities may only be located the Town of Salisbury in accordance with this By-Law. To achieve the above purpose, this subsection establishes the following Wireless Communication Districts:

A. Wireless Communication District A

This overlay district consists of all land located in the Light Industrial District (I), and the following parcels located in the Low Density Residential (R1) and Medium Density Residential District (R2), as shown on the official zoning map for the Town of Salisbury: Assessor’s Map 28, Lot 56 and Assessor’s Map 30, Lot 1. Within this district all of the requirements of the underlying zoning district(s) continue to apply, with the exception of the maximum height allowance, which is established in Section 3 of this By-Law. The following additional uses shall be allowed:

1. Indoor WCF’s allowed as-of-right subject to the dimensional requirements, performance and design standards of this subsection;
2. Building mounted WCF’s, allowed subject to Site Plan Review from the Planning Board and the dimensional requirements, performance and design standards of this subsection;
3. New free standing WCF’s, lattice or monopole types, allowed subject to a special permit and site plan review from the Planning Board and subject to the dimensional requirements, performance and design standards of this subsection.

B. Wireless Communication District B

This district consists of the Low Density Residential District (R1) and the Commercial (C) District, as shown on the official zoning map for the Town of Salisbury. Within this district all of the requirements of the underlying zoning district(s) continue to apply, with the exception of the maximum height allowance, which is established in Section 3 of this By-Law. The following additional uses shall be allowed:

1. Indoor WCF’s allowed as-of-right subject to the dimensional requirements, performance and design standards of this subsection;
2. Building mounted WCF’s allowed subject to Site Plan Review from the Planning Board and the dimensional requirements, performance and design standards of this subsection.
3. Monopoles allowed subject to a Special Permit and Site Plan Review from the Planning Board and subject to the dimensional requirements, performance and design standards of this subsection.

C. Wireless Communication District C

This District consists of all of the Beach Commercial, Commercial 1, Commercial 2, Commercial 3, Zoning Districts. The following additional uses shall be allowed:

1. Indoor WCF's allowed as-of-right subject to the dimensional requirements, performance and design standards of this subsection;
2. Building mounted WCF's allowed subject to Site Plan Review from the Planning Board and the dimensional requirements, performance and design standards of this subsection.

3. Dimensional Requirements for WCF's:

A. Free Standing Lattice Type WCF's shall:

1. not exceed One hundred Sixty feet (160') in height, measured from the base of the tower to the highest point of the tower or its projections;
2. be setback from the property lines of the lot on which it is located by at least One hundred Sixty feet (160') measured from the center of the structure of the WCF base;
3. be located a minimum of Two hundred feet (200') from the nearest residential building within a residentially zoned district;
4. be separated from another Free Standing WCF by Two Hundred feet (200').

B. Building-mounted WCF's shall not:

1. exceed fifteen (15) feet above the roof top of a supporting building, including any penthouse, parapet or other similar structure extending above the roof top;
2. exceed fifteen (15) feet above the highest point of a water tower;
3. exceed the highest point of a smokestack.

C. Free standing Monopole type WCF's shall:

1. Not exceed one hundred feet (100') in height, measured from the base of the tower to the highest point of the tower or its projections;
2. Be setback from the property lines of the lot on which it is located by at least one hundred forty feet (140') measured from the center of the structure of the WCF base;
3. Be located a minimum of two hundred feet (200') from the nearest residential building within a residentially zoned district;
4. Be separated from other free-standing WCF's by a minimum of two hundred feet (200').
5. Have a treed buffer of one hundred feet (100') in diameter containing an average canopy height of 50' at the time of application.
6. Be concealed by the use of camouflaging materials to look like a tree.
7. Be located on a parcel of land of at least 2 acres.

4. Performance Standards/General Requirements

The following performance standards and general requirements shall apply to all WCF's:

- A. Compliance with Federal and State Regulations. All WCF's shall be erected, installed, maintained and used in compliance with all applicable federal and state laws, rules and

regulations, including radio frequency emission regulations as set forth in Section 704 of the 1996 Federal Telecommunications Act.

- B. Co-Location of WCF's. WCF's should be designed to accommodate the maximum number of users technologically practical. Shared use of free standing, building mounted, or indoor WCF's by commercial carriers may be required unless such shared use is shown to be not technologically practical. The intent of this requirement is to reduce the number of separate facilities which will require location within the community..

All owners and operators of land used in whole or in part for a WCF and all owners and operators of such WCF should, as a continuing condition of installing, constructing, erecting and using a WCF, permit other public utilities or FCC licensed commercial entities seeking to operate a WCF to install, erect, mount and use compatible WCF equipment and fixtures on the equipment mounting structure on reasonable commercial terms; provided, however, that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing WCF, and provided that there are no structural or other physical limitations that make it impractical to accommodate the proposed additional WCF or fixtures.

- C. Removal of Abandoned WCF. Any WCF that is not operational for a continuous period of twelve months shall be considered abandoned, and the WCF shall be removed by the owner of the WCF, and the site restored to its original condition, within ninety (90) days of receipt of notice from the Building Inspector notifying the owner of such abandonment.

If such WCF is not removed within ninety (90) days, such WCF shall be deemed to be in violation of this Zoning Bylaw and the appropriate enforcement authority may begin proceedings to enforce and/or cause removal. If there are two or more users of a single WCF, then this provision shall not become effective until all users cease using the WCF.

5. Design Standards

The following design standards shall apply to all free standing WCF's, except for paragraph a, which shall apply for all exterior WCF's:

- A. All exterior WCF equipment and fixtures shall be painted or otherwise screened or colored to minimize their visibility to occupants or residents of surrounding buildings, streets and properties. WCF equipment and fixtures visible against the sky or other background shall be colored to minimize visibility against such background. The maximum amount of vegetation shall be preserved during construction of any WCF.
- B. All free standing WCFs shall be designed to be constructed at the minimum height necessary to accommodate the anticipated and future use.
- C. To the extent feasible all network interconnections from any WCF shall be installed underground, or inside an existing structure.
- D. Fencing shall be provided to control access to wireless communications facilities and shall be compatible with the scenic character of the Town. Fencing shall not be of razor wire.
- E. There shall be no signs, except for announcement signs, no trespassing signs and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall conform with Section VIII Signs of this zoning bylaw.
- F. Night lighting of free standing WCFs shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA.

- G. There shall be a maximum of one (1) parking space for each free standing WCF, to be used in connection with the maintenance of the site, and not to be used for the permanent storage of vehicles or other equipment.
- H. Accessory buildings and/or storage sheds shall be limited to one building per use per tower. If more than one (1) use, the accessory buildings shall be connected by a common wall. Each building shall not exceed three hundred (300) square feet in size and ten (10) feet in height, and shall be of the same design and color.

6. Special Permit

A. Application Process.

1. All special permit applications for WCF's shall be made and filed on the appropriate application form. For an application to be considered complete it shall contain nine copies of the following information:
 - a. A color photograph or rendition of the proposed monopole/lattice tower with its antenna and/or panels. A rendition shall also be prepared providing eight (8) view lines in a one mile (1) radius from the site, shown beginning at true north and continuing clockwise at forty-five (45) degree intervals.
 - b. A description of the monopole/lattice tower and the technical, economic and other reasons for the proposed location, height and design.
 - c. Confirmation that the monopole/lattice tower will comply with all applicable Federal and State standards including, but not limited to, the Federal Aviation Administration, Federal Communications Commission, Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
 - d. A description of the capacity of the monopole/lattice tower including the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the basis for these calculations.
2. Within fourteen (14) days prior to the public hearing, the applicant shall arrange to locate a crane, or an alternative temporary structure approved by the Zoning Board, at the site in a manner that replicates the exact height and location of the proposed monopole/lattice tower. The crane or structure shall remain in position for no less than 8 hours for two consecutive days. The dates and location of the siting shall be advertised in a newspaper of general circulation in the Town at least fourteen (14) days before the siting, and notice shall be sent to abutting property owners.

B. Review Criteria

In addition to applying the Special Permit general conditions described in Section XI, subsection J of this zoning bylaw, and the standards, requirements, or conditions set forth in this Section IX.G., the Board shall review the special permit application in accordance with the following criteria:

1. An applicant proposing a free standing WCF shall prove to the satisfaction of the Board that the visual, economic and aesthetic impacts of the facility on the community will be minimal. The applicant must also demonstrate that the facility needs to be located at the proposed site due to technical, topographical or other unique circumstances. In determining whether to issue a special permit, the Board shall consider the following factors: height of the proposed WCF; the nature of uses adjacent and nearby properties; surrounding topography; surrounding tree coverage and foliage; the visual impact of the facility on the abutting neighborhoods and streets; and the impact on existing vistas and natural resources.

2. No free standing WCF shall be erected or installed except in compliance with the provisions of this Section. Any proposed extension in the height, or construction of a new or replacement of a facility, shall be subject to a new application for a special permit. The addition of cells, antenna or panels to an existing facility does not require the issuance of a special permit but is subject to site plan review.

C. Conditions of Approval

The following conditions of approval shall apply to all grants of applications for WCFs that require a Special Permit as indicated by the above Table of Uses in paragraph 3 herein:

1. If a free standing exterior WCF is to be placed on municipal property the following conditions must be satisfied:
 - a. Certificate of Insurance for liability coverage in the amounts of \$1,000,000.00 must be provided naming the Town as an additional insured.
 - b. An agreement whereby the user indemnifies and holds the Town harmless against any claims for injury or damage resulting from or arising out of the use or occupancy of the Town owned property by the user.
 - c. A cash bond in a reasonable amount determined and approved by the Board shall be in force to cover removal of WCF and restoration of site to the condition that the premises were in at the onset of the lease, when use of said WCF becomes discontinued or obsolete. The amount is to be payable to the Town in the event that the user breaches the conditions of Section 4, paragraph c of this By-Law.

In addition to the above, the Board may impose additional conditions as needed to minimize any adverse impacts of the proposed WCF.

7. Exemptions

The following types of WCFs are exempt from this By-Law:

- A. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that : (1) the tower is not used or licensed for any commercial purpose.
- B. Facilities used by the municipality for the purpose of public safety.